

RULES SUB-COMMITTEE MEETING  
COMMITTEE OF THE WHOLE

February 28, 2011

A meeting of the Rules Sub-committee of the Committee of the Whole of the Council of the County of Kaua'i was called to order by the Sub-committee Chair at the Council Chambers, 3371-A Wilcox Road, Līhu'e, Kaua'i, on Thursday, February 28, 2011 at 1:34 p.m., after which the following members answered the call of the roll:

Honorable Derek S. K. Kawakami  
Honorable Nadine K. Nakamura  
Honorable JoAnn A. Yukimura, Sub-committee Chair

APPROVAL OF AGENDA:

Mr. Kawakami moved to approve the agenda as circulated, seconded by Ms. Nakamura, and unanimously carried.

BUSINESS:

R-4 Continue discussion of proposed changes to Rules 1 through 15 of the Council Rules.

R-5 Continue discussion of:

- new rules relating to communications with the County Attorney;
- procedures relating to the County Auditor;
- public speakers;
- nepotism;
- travel policy;
- consent calendars; and
- invocations.

R-6 Decision making on recommendations to the Committee of the Whole.

Committee Chair Yukimura: Let's go into our business. R-4 says continue discussion of proposed rules changes 1 to 15 of the Council Rules. I believe we went through that initial draft and what resulted was some new suggestions and I guess they're listed here in R-5. Our staff attorney, and thank you very much Peter, has put them into an amendment form and so I think what we can do is just go down one-by-one and I presume members of the audience have their copies. I think what I'll do though is suspend the rules and see if there's any testimony before we start. Does anyone from the public wish to speak? I see Mr. Taylor nodding his head, so the rules are suspended.

There being no objection, the rules were suspended.

KEN TAYLOR: Chair and members of the committee, my name is Ken Taylor. First of all I appreciate, again, having this opportunity, but it's really disturbing to get so many changes on today's proposal right now and not having any time to read them and think about them and to address them. And I know you're under a tight timeframe and staff has a lot to do, but the whole purpose of this was, I had hoped anyway, that we all would be able to participate in moving forward with this discussion in a realistic timeframe and as well as being able to understand what was happening. But things are the way they are and at the last

meeting I turned in a list of changes to be considered. Some were not discussed and others lightly discussed, and it's again now not on the agenda, so I suppose those items can't even be discussed.

But the one thing that did trouble me some in the discussion that went on at last week's meeting was in reference to the direction of our request for public comment, where it seemed to be heading. And I went and pulled up the agendas from a number of communities from California and one from Bozeman, Montana, and all of these agendas have an item on the agenda for public comment and it's all spelled out and it's very simple. And in most communities, they have public comment that's directed to any item that's not on the agenda so that if there's a pothole that hasn't been taken care of in months and months in my neighborhood, I can bring this to the attention of the council. They can take appropriate action to go to public works and deal with that item or find out why it's not being taken care of. The other thing in all these other agendas and you'll see on any one of these agendas that there's items that are in blue and on those items you can click on those items and pull up the staff reports and material for those agendas. And I, for the life of me, don't understand why we don't have that activity here.

EDDIE TOPENIO, JR., Deputy County Clerk: Three minutes.

Mr. Taylor: It requires maybe some changes in the way things are done here at the county building, but it's...I've been told by IT that it was not a big deal for them to do it.

Committee Chair Yukimura: Ken, your three minutes are over and you can have another three minutes.

Mr. Taylor: Anyway, again one of the issues I raised in my comments last time was in reference to Rule 10 and in quickly looking at your rule changes today, I see something on the second to the last page that somewhat resembles this but Rule 10 has not been changed, and I think that this activity...it says here, communications by councilmembers shall be placed on the agenda within 90 days. I know you settled on the 90-day issue at the last meeting, but we were talking about...here you're talking about communications and I don't know if communications are equivalent to requesting an item on the agenda, but certainly could be, but I think it belongs in under Rule 10.

Committee Chair Yukimura: And it's also in another rule, Ken. So we'll go over that today.

Mr. Taylor: That's fine. Thank you for your time.

Committee Chair Yukimura: Thank you very much. There is pretty much nothing in these rules that have been compiled that we haven't discussed in previous meetings. And there will also be a chance to discuss them if we have another hold over meeting, which we've made room for in case we need a meeting after this one. And there will also be time to testify before the committee of the whole, so...and before the council when it goes to the council for final adoption. So there'll be many opportunities for...

Mr. Taylor: I understand that.

Committee Chair Yukimura: Yeah.

Mr. Taylor: We were just hoping that we could get more of this dealt with at the committee level.

Committee Chair Yukimura: Actually, you and Mr. Mickens have had much more opportunity to testify than most people in the public because it's been pretty informal.

Mr. Taylor: I understand and I appreciate it. Thank you.

Committee Chair Yukimura: Thank you, any more discussion? And I didn't see...I don't have Mr. Mickens' handout. So, may we have a copy of what you had for last meet...oh, I'm sorry, Mr. Taylor's...whatever you have in your hand, I haven't seen that. Maybe it's my fault, but if you could have it, then we can have it for the record. Okay, Glenn.

GLENN MICKENS: Thank you, JoAnn, for the record Glenn Mickens. I just want to echo what Ken said about public comment. I think it's well known that in these other municipalities, they all have public comment for what, 15 minutes, whatever, and it should definitely say something to do with our government

Committee Chair Yukimura: You know there is a provision in the rules, but maybe you haven't had a chance to look over it.

Mr. Mickens: Oh, I guess I didn't. But there is...it has been added JoAnn?

Committee Chair Yukimura: Yes and we'll be covering it as we go through rule by rule.

Mr. Mickens: Oh, okay, good, good, well I'm very happy to hear that.

Committee Chair Yukimura: You have been heard.

Mr. Mickens: Yes. In as far as bills, resolutions, agendas, is that being put on the web? I definitely feel that has to be done. I'm not sure where the delay is. I'm not even sure I'm on topic here. But I know that it started last June. It had six months to go before it was going to be finalized. That six months came up and it still to this day you can't go on the website and be able to pick up a bill or a resolution or something. So I just want to say I don't know what the delay is, but I still feel that hey, rather than driving down here and picking up a hard copy of the thing at the desk, we can pick it up at our computer instead of driving 20 or 30 miles, that's all.

I'm glad to see...I just barely glanced at your revisions in this. I'm glad that Rule 10(a) and 10(c) have been clarified and I presume now that it does mean that any member of the council will be able to put something down there and that the chair doesn't have to put their initials on. Is that true?

Committee Chair Yukimura: They do have to put their initials on it. We are allowing discretion, but somewhere within 90 days they have to get it on the agenda.

Mr. Mickens: Oh, okay, okay, well that's the big thing and it's taking place that within 90 days it's going to have to be seen. That says 90 days, 90 days or before? In other words...

Committee Chair Yukimura: It's up to the discretion of the chair. We thought that that was important too to balance.

Mr. Mickens: Sure, he can take a look at it and see if it's a real important issue, if it's one that can be put off for 90 days, he can.

Committee Chair Yukimura: Right.

Mr. Mickens: But if he's got a whole bunch of issues to put on there, I'm sure he can go ahead and itemize those or prioritize what he's going to do, right?

Committee Chair Yukimura: That's correct.

Mr. Mickens: Well, I'm really happy to see (inaudible). Thank you, JoAnn.

Committee Chair Yukimura: Thank you. Is there any other discussion? I don't see anybody else, but... All right, if not, our meeting will come back to order and...

There being no one else wishing to testify, the meeting was called back to order, and proceeded as follows:

Mr. Kawakami: Excuse me.

Committee Chair Yukimura: Yes.

Mr. Kawakami: Just for the record.

Committee Chair Yukimura: Oh, did you have a question? I'm sorry.

Mr. Kawakami: No, no, no question, but I do think that we did receive written testimony from Linda Harmon earlier. Is that correct or was it a personal email?

Committee Chair Yukimura: Between the meetings, this meeting and... I don't know. Have we received any written input at council testimony? Did she send it to individuals? Maybe.

Mr. Kawakami: Could have been.

Committee Chair Yukimura: Yeah.

Mr. Kawakami: Yeah.

Committee Chair Yukimura: We'll take a break and maybe we can retrieve it and make sure it's part of the record.

Mr. Kawakami: We don't need to take a break. We can move forward.

Mr. Topenio: We didn't receive it.

Mr. Kawakami: Yeah, they didn't receive it. I think I got it in my personal...

Committee Chair Yukimura: Yeah and it may have... I haven't checked my email for a couple days. So remind me, though, because I think we would like to get it as part of the record.

Mr. Kawakami: Okay.

Committee Chair Yukimura: Okay, so we are back in session and the chair would recommend that we just go through rule by rule, and if we're all okay, we just say okay and then if we need to make amendments, we'll make amendments, and then adopt it as a whole or recommend its adoption as a whole. Any objections to the process? Okay, so the first changes come on page 3, that's rule 1(e) regarding executive sessions.

Ms. Nakamura: Before we do that, I think one of the recommendations was that we have a table of contents.

Committee Chair Yukimura: Yeah.

Ms. Nakamura: So can we add that to this?

Committee Chair Yukimura: We realized that we didn't need to make a rule about a table of contents, but we think too that it would be a good idea. We just didn't want to do one until we finish the rules.

Ms. Nakamura: That's fine.

Committee Chair Yukimura: Yeah, but that's... I think that's something we will include. Okay, 1(e) executive sessions. I think at Councilmember Nakamura's urging, and I agree with it that we list the specific conditions under which we would go into executive session and that would help anyone reading these rules to understand it. Is there any discussion?

Mr. Kawakami: These are all just covered in the charter or H.R.S. as it is anyway, yeah? So this is not adding anything, it's just to clarify.

Committee Chair Yukimura: Yes.

Mr. Kawakami: Okay.

Committee Chair Yukimura: I mean it's not creating anything new.

Mr. Kawakami: No problem.

Committee Chair Yukimura: All right. So if there are no questions or objections or proposed changes, we'll move on to 1(g). And I believe this is from you, Councilmember Nakamura. So if I may read it, committee chairs may schedule workshops to encourage increased dialogue among county representatives, technical experts, and the general public. The chair or chair's designee shall prepare the agenda and facilitate the meeting. Written public notice shall be given as required

and the workshop agenda may include the introduction of participants, presentations, and discussions of critical issues relating to a bill before the council. So that's the proposed format which leaves it open to actually the chair's design and it seems very flexible and will allow some experimentation with format, which I think will be healthy. Any discussion? Any concerns? If not, shall we move on? We can always come back if something occurs to you.

Okay and then h, 1(h) is notices and this is the one that updates our rules by acknowledging that there's such a thing as a website and requires posting of all our meetings.

Ms. Nakamura: I have a concern about the placement of this. There are other sections regarding notices and I think this section talks about all the different types of meetings the council has. These two, the next one, Notices and Public Speaking, kind of takes...there's sections within the rules that discuss these things, so I'm not sure if this is the appropriate location for notices.

Committee Chair Yukimura: Where do you think it should be?

Ms. Nakamura: I think there's something in Rule 10 or Rule 15. It kind of...let's see now. I think it's 15, hold on.

Committee Chair Yukimura: Agenda and Priority of Businesses.

Ms. Nakamura: It's 15. It talks about posting agendas, it talks about communications placed on the agenda, Rule 15, and it seems like that's where...

Committee Chair Yukimura: You know there is some overlap. Rule 1 is about meetings.

Ms. Nakamura: It's basically listing all the different types of meetings. You can have a regular council meeting, standing committee meeting, special meetings, executive session. It's not...notices talk about how we inform the public. It's just a suggestion and you can keep it there, but it seems like it's listed in other places so why not just put it in one place?

Committee Chair Yukimura: I'm still not clear where that would be. Rule 10 is general provisions regarding bills, resolutions, motions and amendments, and Rule 15 is agenda and priority of businesses. Those are somewhat different than notices, whereas meetings would be about the basic parameters for meetings and notice would be one of them. But...

Mr. Morimoto: 15(b) maybe.

Committee Chair Yukimura: 15 what?

Mr. Morimoto: 15(b).

Committee Chair Yukimura: (b), that's still an internal position. Or (d)?

PETER MORIMOTO, Council Legal Analyst: 15 (b) or (d).

Committee Chair Yukimura: (d) might be, clerk shall prepare...yeah, you could put notices there. Would you prefer that?

Ms. Nakamura: I think at (e). I think it fits in.

Committee Chair Yukimura: Okay.

Ms. Nakamura: In Rule 15.

Committee Chair Yukimura: Okay, all right, let's...

Ms. Nakamura: I mean you can leave it up to Peter to decide where it fits in, but it...

Committee Chair Yukimura: Okay. Well, if there are no objections, we'll just put it in 15(d) which is about the posting of agendas. Is there any problem with that? Because actually notices are basically the agenda, wouldn't that be? Yeah.

Ms. Nakamura: Yeah and if it's redundant, just combine it into one.

Committee Chair Yukimura: And actually it doesn't matter if it's redundant as long as they're all consistent.

Ms. Nakamura: Yeah.

Committee Chair Yukimura: Okay, unless there are any objections, we'll move the issue of notices to 15(d).

Ms. Nakamura: And also, the next one, public speaking. It seems to be in order of business.

Committee Chair Yukimura: Yeah, it is.

Ms. Nakamura: So Rule 14.

Mr. Kawakami: I have a question on rule, on the public speaking, not necessarily about where we're going to put it in the rules, but I have a question that is this now going to supersede Rule 12(f) as far as, on page 18, public hearings?

Committee Chair Yukimura: Okay, yeah, let's talk about...

Mr. Kawakami: Because in 12(f) it clearly sets the parameters that we've been operating within and it seems to me that this proposed rule would now say that there's a total of 15 minutes allocated to the public to speak on items related to or not related to the agenda. So, I mean, you would give a room full of people a total of 15 minutes to testify and if you happen to have say 30 people in the room, they would be left out of the equation, and it would also open up, say for example, today we have two members of the public here to testify, we would grant them their three minutes, maybe another three minutes, and then they would have a remainder of minutes to go ahead and talk about anything under the sun. Is that the intent of this is to limit all public testimony to 15 minutes?

Committee Chair Yukimura: Those are all really good questions and we discussed them at the last meeting when you weren't present. So the intention was first-come first-served that this part at the beginning of the meeting would be for people who couldn't stay and wait for their agenda item to come up, and so they would be able to speak at the beginning and leave, as to agenda items. And then if

there were time left over, then people could speak and this is the first time we've put it in writing. So that's what we're to discuss today and actually there's a question that came up for me as I read the the wording in terms of do they get to speak three minutes on each agenda item that they want to speak on or they fit everything they want to say about anything on the agenda into three minutes, and no six-minute, no three-minute extension, and first-come, first served. And then the other question is which meetings to allow this? Do we allow this at a rules committee meeting where we really are focused and you can speak on the agenda item, but not on any subject that you want to speak, but maybe at a council meeting, although the example that was given today, like a pothole can be handled in a much other way. It can be handled by going to a councilmember and the councilmember can do a personal request to the administration. So...

Mr. Kawakami: Could I make a suggestion?

Committee Chair Yukimura: Yeah, go ahead.

Mr. Kawakami: I suggest that when we look at our process compared to the other counties, we are...we're generous as far as the amount of time we allocate for the public to speak. And I've yet to see anybody get, you know, just, you know, after their six minutes, you know, that six minutes is a lot and we allow them six minutes. And for people that cannot attend the meeting, we have other means. They can submit written testimony and if they don't have email, we have had people handwrite and send it in to us. So I think there are avenues and just by the nature of how we operate, because we're posting our agenda well in advance, it gives the public, in my opinion, sufficient time to submit testimony on their agenda item. So I would...I'm not in favor, yeah, of this 15-minute rule just because I think that we already have rules in place that are generous.

Committee Chair Yukimura: Okay. Councilmember Nakamura.

Ms. Nakamura: Yeah, I think when we were talking about it, the concern for me was for the working man and woman who doesn't have time to sit around here and wait till their testimony and they want to speak to us, that was what my consideration was, just give them a few minutes so they don't have to take all day off from work. But just if they have to say their piece, do their piece and go. That was my interest in doing this. But I understand what you're saying too that there are other means of doing it. It's just some people...I don't know...just may want to be physically present to give their testimony. So I'm willing to look at both sides.

Mr. Kawakami: It's just I think the chair, as the administrator of how we operate our meetings, I would think that he would have it under his discretion to...I mean if a room is full of people that are here for one item, we have taken things out of order to accommodate these people I think in the past. And I don't think that would be an issue with any of us. I've seen in the past where we've had people sit in the crowd and you've seen the chair say, hey, you know, and anyone of us can propose it, hey, can we take this item out of order?

Committee Chair Yukimura: Oh, but I've also seen where there's been a big item and certain people like government people get to put things out of order but not the ordinary person with one issue, and I've seen people come and wait where there's been a really long...a very big subject and have to wait and wait and wait and wait.



Mr. Kawakami: Okay, I got a question. Has anybody gone out of their way to say hey, chair, there's about 50 people here for this item, could we take this item out of order?

Committee Chair Yukimura: Yes, many times.

Mr. Kawakami: And it's always been denied.

Committee Chair Yukimura: But it's the other people who don't have 50 people with them on an issue that have to wait and wait and wait and wait. Whereas if they could just speak at the beginning of the meeting and leave, and they want to be here, they want to be here to present. There is a difference in being able to present than submitting written testimony. So I think there is a need and it'd be interesting to see how it's used. We may have to experiment with it.

Ms. Nakamura: Well, the other thing, Derek, and correct me if I'm wrong, but we were talking about how other counties do it at the last meeting and we were talking about how many of them do all their public testimony up front and then they go on with their meeting and they don't accept public testimony after that point. So we're...we do it kind of as we go along, right, here. So I guess we were just trying to figure out what is the right balance.

Committee Chair Yukimura: Right and I think we were saying 15 minutes won't be very long and so it will be on a first-come first-served basis and there may be people who are willing to wait or it's a fairly short agenda, but for those for whom time is an issue, they would have the opportunity to come early, sign in, it's a first-come first-served, it doesn't matter if you know the chair or not, you can just testify and then go. So it's not long enough to really intrude and for people that are here like...we're not going to be able to accommodate everybody, but in many cases we may be able to accommodate those who have time issues. And we could try it and see how it works and then of course the other...I'm thinking that we would just say three minutes, and if you want to speak on more than one item, you have to fit all of it in three minutes, you know, on the agenda. And then you'll see that there's also this piece of two minutes to discuss matters not on the agenda. And that was from testimony at our last meeting and because apparently other jurisdictions do it. But that's the one that's most gnarly because like I said, there may be other opportunities to talk. But an agenda item which may have action on it, before...on that day, you know.

Mr. Kawakami: You know, I have no problem if there's people here that you want to give them a chance to testify if they gotta get back to work. How are you going to handle say one person that makes use of these 15 minutes prior to the meeting to talk about an item on the agenda?

Committee Chair Yukimura: They only have three minutes or two minutes.

Mr. Kawakami: They have three minutes.

Committee Chair Yukimura: Okay.

Mr. Kawakami: And then they're going to stick around, and the agenda item is going to pop up again. Are you going to allow them a second time to come up and now give six more minutes of testimony?

Committee Chair Yukimura: That's a very good question and we could restrict it and say...and...because the assumption is that they cannot wait around for the subject to come up so that if they speak at the beginning, they will not be allowed to speak, that'll be it.

Mr. Kawakami: And you know, Committee Chair...I mean Vice Chair, I have a concern and a...completely honest concern that as it is, yeah, if we allow discussion to go outside of the agenda, which we already do, I mean the chairs have pretty much let the public testify on items that are completely out of the realm of the agenda, but I'm not confident that our members that sit on this table would be able to restrain themselves from getting into a discussion that may violate now Sunshine Law because we'll be getting into discussion on items that are not agendaed. So is there going to be a rule? Are we going to maintain or are we going to start enforcing this requirement or suggestion that the purpose of public testimony and public hearings is to gather information and not necessarily engage in debate or discussion but to allow the members to give us information?

Committee Chair Yukimura: Okay, that's also a very good point and I think we could further restrict this by saying there shall be no question and answers to those who testify. We just go through and listen to them and that's it. I mean it's ours to structure, and we're trying to accommodate people who...only...you know. Now what we would be eliminating by doing that is an opportunity to sometimes clarify people's positions and what they're thinking, like sometimes you can say does that mean you're for or against the bill because sometimes their testimony's not clear and a question to clarify is useful. So we would be giving up that in return for not allowing this unending spiral of conversation. So because there's such a limited time and whatever time we take will take away from someone else really because it's going to be split no matter what the...how many people want to speak, so. Well, it's not going to be split. It's going to be given to the first... If it's all on subject matter, it'll be given to the first five people who want to speak.

Mr. Kawakami: You know I would be for because there's a lot of good things, good intentions, the intent to give people that are working an opportunity to testify, but there is also a lot of loopholes that could be...like for example if I come up and I testify at the beginning of the meeting and then now we're on the agenda item and I come up a second time and utilize six more minutes. If there would be a way that we could give the chair discretion, yeah, to use this and address my concerns, I could support it. But I would not support discussion on matters not on the agenda and it's just because there's other means. I mean we get inquiries about potholes and we get inquiries...I mean we're still accessible to the public to a large part. This is Kaua'i. You know we're very transparent as far as our email addresses, our telephone numbers, our office numbers. They can call our staff. Our staff relay messages to us. So there are other means besides just having a free-for-all prior to the meeting when we're supposed to be conducting business. And so I think it's not going to be...my proposal wouldn't be everything for everybody, but it would be a compromise.

Committee Chair Yukimura: Okay.

Mr. Kawakami: Because that's my concern. It's just the discussion on items outside the agenda. To me there's other avenues to discuss that kind of things.

Committee Chair Yukimura: Other discussion? I will suspend the rules after we're finished discussing and before we take a vote.

Ms. Nakamura: I think you raised good points and that might be a good compromise. I think if we...if you say, each speaker shall be limited to three minutes to discuss the agenda item and shall not have the opportunity to speak during the course of the meeting on the same matter, something like that because that's their opportunity to do it up front.

Mr. Kawakami: And then it's up to them to decide...

Ms. Nakamura: Yes.

Mr. Kawakami: ...how they want to utilize that because there's going to be times when if my intent is to stick around the whole meeting, I'm not going to want to testify up front because as we all know when we're on the agenda item, we're going to have amendments that are going to pop up.

Ms. Nakamura: Right, right.

Mr. Kawakami: And the rules may be suspended again for a second testimony on a lot of these items and that would lock them out.

Ms. Nakamura: Right.

Committee Chair Yukimura: Okay, so the suggestion is to eliminate the opportunity for non-agenda items.

Mr. Kawakami: Yes.

Committee Chair Yukimura: But to retain the opportunity for agenda items and so each speaker shall be limited to three minutes to discuss agenda items. So if they want to address two or three agenda items, they have to get it all within the three minutes and they can submit supporting written testimony and then that this would be their only time to speak on this agenda.

Mr. Kawakami: If you guys are okay with that.

Committee Chair Yukimura: So that's what I'm hearing and I think that's a good way to start and we can always amend the rules if we want to later.

Ms. Nakamura: And also the provision there shall be no questions and answers from the councilmembers during this period.

Mr. Kawakami: If...well that should be automatic because even like...I mean kind of...it gives you the intent behind the public discussion is just to take in info. But my comment on that question and answer part was more if we were going to start allowing items to be discussed outside of the agenda, then we would need some really clear language to prevent that because you know how it goes. Some guy is going to come testify on potholes and then as soon as a councilmember engages in discussion, we're violating the Sunshine Law because it's not an agenda item. So by right, we don't...we can't even discuss it.

Committee Chair Yukimura: Okay, but that issue is moot if we take out the...

Mr. Kawakami: Yeah, if we take it out, yeah.

Committee Chair Yukimura: So then the question still remains whether we're going to restrict question and answers for testimony on agenda items, I'm not clear.

Mr. Kawakami: No, the language already in here kind of gives the...like on page 18...page 17, public hearings are held to receive testimony from the public and councilmembers should reserve their opinions and arguments for the appropriate council or committee meeting. That is pretty clear language as to the intent behind public hearings and testimony and how we should be conducting ourselves.

Committee Chair Yukimura: Well, the thing is that it is under public hearing, so you want to clarify what the rules are with respect to just a meeting.

Ms. Nakamura: I think we can use the same language, but just put in here councilmembers should reserve their opinions and arguments for the appropriate agenda item during the council meeting.

Committee Chair Yukimura: Okay, right. The thing is that it doesn't always work and so are we saying we're still going to allow question and answers, though?

Ms. Nakamura: I don't think so. That's going to extend this period to much longer than 15 minutes.

Committee Chair Yukimura: Right, so we would ban any comments or questions from councilmembers then. It would be a straight testimony after testimony.

Ms. Nakamura: That's correct. That's my thinking behind this.

Committee Chair Yukimura: You know, I can go with that as a first cut, I mean to try it as a rule and see how it works. I mean I can see myself running out as they leave and just saying, okay, does that mean you're for or against the bill if you need some urgent clarification, but...

Mr. Kawakami: You know I wonder...oops, sorry.

Committee Chair Yukimura: Go ahead.

Mr. Kawakami: I'm just wondering if because this...there's going to be rules in this thing that will be easy to change and because this one we're already at the point where we're saying, hey, let's try it out. Can we just without putting it in the rules just talk to Chair Furfaro and say, hey, you know what, the committee is contemplating this rule change. We're not going to be able to get it into the timeframe necessary. Could you try this out for the next three months to see how it works out? And if it works out we can always come back and meet as a sub-committee and then propose another rule change.

Committee Chair Yukimura: So you want to leave it unspoken.

Mr. Kawakami: I want to leave it unspoken. Just...let's talk to the chair and tell him, hey, let's try this thing out. Let's open it up, the first 15 minutes, for guys that come for an item and they need to be able to talk on the agenda item, but at least it gives them the flexibility to say their piece and be on with their day.

Committee Chair Yukimura: Okay, but I'm not clear whether you're envisioning the chair allowing question and answers and discussion from councilmembers. Or are you asking him to informally ban it and see how it works without a rule in writing.

Mr. Kawakami: Yeah, I don't think it...I think it's hard to ban anybody from speaking because we get into the problem with the prior council is some...you could be accused of...you know what I mean?

Committee Chair Yukimura: Well that's why if the council adopts it as their rule, it gives the chair more support in limiting questions and answers and discussions. And it's very easy if you just say no discussion, no questions because then you're not having to judge whether it's relevant or not, whether it's arguing or not, you know, like that.

Ms. Nakamura: Here's a suggestion that we put in some language that gets to the intent of what we're trying to accomplish and when it goes to the council, at that time we can broach the idea of either making it an internal kind of policy that doesn't have to be in the rules, but at least everybody understands what we're trying to accomplish...

Mr. Kawakami: Okay.

Ms. Nakamura: But keep it open. I don't...

Committee Chair Yukimura: Yeah, because it's not just councilmembers that we have to be clear about the intent. It's the public as well that we have to be clear about the intent. So that's the value of putting it in writing, so everybody understands what the rules are. So we can leave it like it is and have more input from other councilmembers and at the time of the Committee of the Whole, further clarify if we want to.

Ms. Nakamura: Yeah.

Committee Chair Yukimura: Or we can put an intention line in here and then if we think we need a more clear definitive rule at the time of the...and we will be having more testimony also from the public, we can see whether we want to go further in defining it.

Ms. Nakamura: Okay.

Committee Chair Yukimura: So shall we just put it in an intentional line here about what we...that we intend it primarily to be a time for the public to speak, that we want councilmembers to really restrain themselves in terms of questions and comments.

Mr. Morimoto: We can add language that councilmembers shall not address the speaker.

Committee Chair Yukimura: Okay.

Ms. Nakamura: That's fine.

Committee Chair Yukimura: Okay, you can figure out the best form to express this intent and we'll review it. But let's see, if we're going to act on it today, we need some wording, so maybe you should work on some specific wording. And in the meantime I'm going to suspend the rules and see if the public—I saw a hand—wants to speak on this particular issue. So the rules are suspended. Mr. Taylor.

There being no objection, the rules were suspended.

KEN TAYLOR: Thank you, Chair and committee, my name is Ken Taylor. I certainly disagree with the direction that this seems to be going, but first of all I would like to suggest in order to accommodate people that can't be here during the working day, consideration to solve that problem would be to go into a split agenda time where you start at 1 or 1:30 in the afternoon to take care of the housekeeping issues and then come back at 6 or 6:30 p.m. and deal with issues that affect the community so that people that do have to work wouldn't have to take off from work and they could attend the meetings if they so choose. This is not an unusual thing. In my looking at different agendas across the country, I saw...found many, many communities that had that type of an arrangement. So in the afternoon you deal with the housekeeping issues and in the evening you deal with the issues that affect the community and it makes a lot of sense. I'd just like to read to you from the agenda of the Board of Supervisors for the County of Santa Barbara in reference to a comment period. This happens to be the agenda for January 18, 2011. Persons...and it's on all the agendas. I just happened to pull this one up. Persons desiring to address the Board must complete and deliver to the clerk the form which is available at the hearing room entrance prior to the commencement of public comment period. The public comment period is reserved for comments on matters within the subject matter jurisdiction of the Board of Supervisors. Each person may address the Board for up to three minutes at the discretion of the chair for a total public comment period of no more than 15 minutes. Now, my comment about the pothole is a very simplistic situation and there's certainly a lot more reasons to bring an issue to the full Board when I feel that I've exhausted other options. And theoretically I shouldn't be sending letters to all—I know it's being done—but I shouldn't be sending letters of concern or request for something to all seven board members because you can't deal with it. And so I think that the only time I can legitimately discuss something in front of the Board...

Mr. Topenio: Three minutes.

Mr. Taylor: ...to all seven board members is in a comment period, so.

Committee Chair Yukimura: Okay, if you want to give us a copy of that, we'd like to have it for our records, okay. Thank you very much. And oh, I just want to say that we used to have public hearings and I think even council meetings starting at 1:30 p.m. Was that right, Jade? And we had public hearings at 4:30 p.m. and it didn't seem to matter a whole lot how many people came, and we had to pay overtime for our staff. And so Jimmy Tokioka did...he calculated the cost of doing it and we all weighed the cost versus the value that we got, and we moved the time back to the present schedule. I'm sorry?

(Inaudible.)

Committee Chair Yukimura: It's issue driven so...yeah. Okay, so I think what our staff is saying is that if we find a really, really big issue, we could just on a case-by-case basis—I remember some of the Nukoli'i hearings held at the War Memorial Convention Hall—change the place and change the time. But for most perfunctory council public hearings and meetings, it seems to work better to just start (inaudible). It doesn't accommodate everybody, but we can't accommodate everybody no matter how hard we try. So I just wanted to give you that piece of history that we have tried it.

Mr. Taylor: Thank you.

Committee Chair Yukimura: Yeah, thank you. All right. Any further discussion? Mr. Mickens. For these discussions, I'm going to limit it to three minutes, okay, because we have to keep moving.

GLENN MICKENS: I'll make it short, thank you, JoAnn. You got in this thing that...I'm highly in favor of having you be able to speak on any... I think the way it is now, an agenda item comes up, the public's allowed to get up and speak for three or six minutes on any agenda item. I think you're going in the right direction if somebody is here, can't wait and you move the agenda item around for their sake, you could raise your hand, ask the chair, ask if there's anybody here that wants to do it. There may not be anybody. I haven't seen that many...

Committee Chair Yukimura: There may be five people who want to switch around the agenda. It gets kind of complicated.

Mr. Mickens: Well, that's true, so that might not be a good idea to change it around. If they want to testify on the agenda, they can wait until the agenda. But you have seen like Caren Diamond sat here one time I remember and you were most sympathetic. She sat here until way in the afternoon and she had been here all morning long and everything, and (inaudible) legitimate item she wanted to talk on. So, I remember you talking to her, JoAnn.

Committee Chair Yukimura: Well and that's why we're trying this 15-minute to give people who don't want to sit around all day a chance to give their testimony up front.

Mr. Mickens: Yeah, you can go ahead and play with that. But it says if the 15 minutes has not been utilized, the public shall be allowed the remaining time to speak on subjects not related to the agenda. To me that's way too broad. It should be on government items only. Not related to...they might be talking to spaceships or something, so. You don't want somebody sitting here doing that type of thing obviously. So I am just in favor... I know I heard Derek's arguments about Ken's talking about a pothole or something, but I know that the public from time to time, it's really tough. You bring a thing up, you're sitting here before the cameras and stuff, you bring it up for the public's sake as well, that people, maybe your neighbors have talked to you and say, why don't you tell these guys. Well, it's got to be on the agenda. If it's not on the agenda, we're only talking about 15 minutes again, JoAnn. And you're not talking about hours and hours of different testimony. You give them 15 minutes. If there's too many people, then as you pointed out, first-come first-served basis, sign a slip or something, and if there's only two people here, then as the chair if you want to extend it past (inaudible), it's a judgment call that's all.

Committee Chair Yukimura: Thank you, Glenn.

Mr. Mickens: Thank you.

Committee Chair Yukimura: Any questions? If not, any further testimony on rule...is this on the rule that we're on, Linda?

LINDA HARMON: Nine?

Committee Chair Yukimura: No, it's Rule 1(i).

Ms. Harmon: It's about the comment...

Committee Chair Yukimura: Do you have the rules?

Ms. Harmon: Public speaking, yeah.

Committee Chair Yukimura: Okay, please take the seat.

Ms. Harmon: I had trouble getting here.

Committee Chair Yukimura: Would you state your name.

Ms. Harmon: My name is Linda Harmon and anyway, I have concern about public comment period. I went to a number of different sites for agendas of different communities, and they all had public comment period. And it was regarding matters other than that on the agenda. And in one community they even allowed five minutes for a person. But three minutes...I mean that's not much and 15 minutes, that's at the most if there's like you say five people that want to make comments. I have a submission for you. I submitted something by email, but I was having a lot of trouble with it because I was cutting and pasting from different agendas and it...

Committee Chair Yukimura: We'll be happy to receive it here.

Ms. Harmon: Okay.

Committee Chair Yukimura: Thank you.

Ms. Harmon: And I have enough for all of you.

Committee Chair Yukimura: Okay, thank you.

Ms. Harmon: But I thought this was a procedural thing and that it would be Rule No. 9.

Committee Chair Yukimura: You know, at this point you can suggest where it will be, but it will be wherever we feel it's best placed.

Ms. Harmon: Okay, yeah, yeah. Okay, let's see, one, two, three.

Committee Chair Yukimura: Do you have any more testimony? Is that it?

Ms. Harmon: Well, no, I have testimony on other matters as well.



Committee Chair Yukimura: Okay, all right.

Ms. Harmon: I think closed sessions should be held...

Committee Chair Yukimura: Could you wait till we get to the appropriate place. We're going one by one over these rules, okay.

Ms. Harmon: Sure, sure, okay.

Committee Chair Yukimura: Thank you very much. Okay, so we're back in session.

There being no one else wishing to testify on this matter, the meeting was called back to order, and proceeded as follows:

Committee Chair Yukimura: And what I heard from our committee is that we would like to allow...and I think perhaps a better title might be up front testimony on agenda items or something like that that suggests...and that it would be allowed at the beginning of the agenda for 15 minutes total and that each speaker would be limited to three minutes to discuss agenda items. Oh, I know, each speaker would be allowed a one-time only opportunity to speak on agenda items and it will be limited to three minutes.

Ms. Nakamura: That's fine.

Committee Chair Yukimura: And we will have a statement of intention regarding councilmembers not interacting with the speakers so that all of the 15 minutes will go to public testimony. I know Glenn would like that.

Ms. Nakamura: And I think it should be in Rule 14.

Committee Chair Yukimura: And Councilmember Nakamura is suggesting that it be placed in Rule 14, which is order of business. It could also be in Rule 15 which seems to explicate on the order of business, but...because it...well.

Ms. Nakamura: Either way.

Committee Chair Yukimura: So maybe we can leave that to staff to look at that.

Ms. Nakamura: Yeah, yeah, staff can (inaudible).

Committee Chair Yukimura: Okay. All right, so with those...may I assume a consensus here and then I'll ask the staff attorney to draft some language.

Ms. Nakamura: That's fine.

Committee Chair Yukimura: Okay, then we'll move on. Oh, I see that actually we have in Rule 2, it's not highlighted but it should be where the physical majority...oops, I'm sorry, Rule 2. From (a) on there's...oh, just in (a) it's not highlighted where physical is being taken out, deleted, so that it would read a majority of four.

Mr. Morimoto: Actually, it is highlighted in gray.

Committee Chair Yukimura: I'm sorry? Oh, it's gray, okay. It's not yellow, okay. Why? Did we...does it mean...oh, okay because we're high...the gray are the deletions, excuse me, thank you. Okay, so you can see the deletions and then the additions, and there's a synchrony now because we're removing physical majority because we're allowing councilmembers to remotely participate and that's in (e), in Rule 2(e), and then there is the issue of...okay, so if we can...

Mr. Kawakami: Take them one by one.

Committee Chair Yukimura: Yeah and then there is this side issue of having two-thirds vote to authorize release of county attorney opinions. Can we first take this issue of deleting the word physical and delineating how a councilmember may participate remotely? Yes, Councilmember.

Mr. Kawakami: I know I brought it up because of my time with KIUC, but I do have some serious concerns. Even if we have the technology to do it, (1) I have a concern about confidentiality in regard to executive sessions and how they're handled remotely. I know that at KIUC you were not allowed to participate in any executive sessions remotely just because there was no guarantee that you'd be the only one in the room. Number 2, a challenge that's going to present itself is how we are going to handle floor amendments because say for example I'm on a trip and as we all know there's going to be amendments that are going to be floated on the day of that would require me to have some fax machines or some sort to be able to...and so I just think at this time it's better if we just keep the standard that way it is now and if you are going to be participating, you gotta be sitting in the chair. Until we can kind of hammer out all these issues because the way that Big Island handles it is they have staff in Kona because they split their meetings. Some of them are in Hilo and you may have some members in Kona, but they have the staff and they have all the equipment to be able to operate in that manner.

Committee Chair Yukimura: Okay, well I mean we could...you raise very good points and we could just take it on now to define that and say that they would have to be at a com...first of all, I think we can...it's advisable to not allow participation in executive sessions. Although we do allow our attorneys to participate remotely in executive session, like Mr. Minkin for example and our worker comp attorney and worker comp, they come in. Now they're bound by confidentiality and so would councilmembers be also bound. I mean so we could decide not to, but then the other issue is if you're at a computer and can receive an attachment, that's the only other issue so far that isn't addressed here and we could add that.

Mr. Kawakami: My recommendation is easier. I just say we just scrap this and...I mean at this time I think the way we're operating currently and the requirement that you be here physically is the way that we should be conducting our business. Yeah, I don't think we're at that level where...and if you put it in the rules, it...I think we sh...we have to...I think just the way we're operating now is good.

Ms. Nakamura: Okay (inaudible).

Mr. Kawakami: Yeah, I know your intent and it's good. It's just...it's going to be an inconvenience for all of us too, I'm going to tell you that much. The reality of it is there's going to be delays and we're going to be waiting

and it's going to lengthen the process too, which is not a deciding factor, but I just think that the way we're operating now it works. And if we cannot get a quorum, we cannot get a quorum. I don't think that's been a problem in the past, has it?

Committee Chair Yukimura: No. What it's done is it's...like on the shoreline setback and on the vacation rental, it caused delay after delay.

Mr. Kawakami: Oh yeah?

Committee Chair Yukimura: Yeah, that's what happens.

Mr. Kawakami: With what?

Committee Chair Yukimura: Because we don't put it on the agenda because we don't have everybody here, people who wanted to be here couldn't be here, so that was one consequence it did get. Because one person was gone and of course it was the discretion of the chair and in that case the chair said we're going to defer it. So that was a combination of factors. But I think you're right. There's not been...I mean it does delay business. That's what it does and sometimes a delay is critical like the longer we delayed on the vacation rental, the more people got to grandfather in their units when it was like a matter of a year or two, and sometimes it's not. So what you're suggesting...I mean it does raise the level of complication. I don't know if other councils have this provision. You're saying just the Big Island, the rest don't.

Mr. Kawakami: I'm not aware of the other councils having (inaudible).

Committee Chair Yukimura: So then we do want to put back physical then into the quorum if we go that way.

Ms. Nakamura: Yeah.

Committee Chair Yukimura: Yeah. Okay, I think there's a consensus here, so we'll do that. We'll just take out the section on remote attendance, which is (e), and put back physical quorum, okay.

Ms. Nakamura: On Rule No. 2(a), there...we outline all of the situations where you need a two-thirds vote of the council and a couple of them that weren't in here include to hold an emergency meeting and to authorize employment of special counsel to represent the council.

Committee Chair Yukimura: And I think you raised those points before. So, can we add those two then and actually I think we should have two different sections. One that defines the quorum and another that defines when two-thirds vote is required because they're kind of two different...or one that says a majority vote is necessary to take action except. So one is about a quorum and the other is about the vote required. Can we do that, Peter, two different sections? And then add under the section that defines vote for the two-thirds vote we would add in the emergency meetings and the employment of special counsel. Okay, let's now go to...any other discussion on that?

I want to go to the release of opinion, county attorney opinion, which is right now it would be (a)(4).

Mr. Kawakami: Okay (inaudible)...we'll have a discussion on that?

Committee Chair Yukimura: Yes, we're open for discussion now.

Mr. Kawakami: Okay.

Committee Chair Yukimura: Go ahead, Councilmember Kawakami.

Mr. Kawakami: I do have concerns because this rule specifically is going to reference Rule 17...no, Rule 17...what is this?

Committee Chair Yukimura: It's related to...

Mr. Kawakami: Rule 17 on page 21 and the way that this rule or the way that I'm reading this rule is that if I send out a confidential inquiry to the county attorney on an item that is not agendaed, my attorney-client privilege would be upheld. There's no vote that could be taken to release that information. But the way I've been reading it, say for example if I'm requesting a confidential attorney-client communication on a bill that's on the agenda, that a super majority would jeopardize my attorney-client privilege, meaning that if I send a personal request to our county attorney saying, hey, I want to take a look into my sunshine market bill, but I want it to remain confidential, that would...I mean now a super majority, five members of the council could take a vote to make my personal communication and inquiry public record.

Committee Chair Yukimura: Yes. The...it's councilmember Bynum's proposal that is incorporated here and he wanted us to have a discussion on it and I believe it says if the subject matter of the opinion and the request has been placed on the council agenda, then the request for the opinion and the opinion received pursuant to that request shall be circulated concurrently to all councilmembers but shall remain privileged communication with regards to other parties. So that is a policy issue that we need to make and I think...it's too bad Councilmember Bynum's not here to...I think it would be very appropriate to have him testify because we're in open meeting. I don't see how it would violate the Sunshine Law, but because it's become a matter of public or a matter of the council. The council has taken it up as a subject, he's saying that the matter should be and the county attorney's opinion on it should be available to all councilmembers because we're going to have to act on it. So, it's a policy call and there's some policy rationale. I mean if the county attorney opines...now if it's a matter of conflict of interest, which is personal to you, versus a matter on the sunshine market, which is a subject on which we're going to vote, then he's saying a county attorney's opinion on it should be made available to all of us so we have what the law is, what the state of the law is so that we can vote in an informed way. I think that's the intention. Now we do have the county attorney here and maybe Ms. Esaki wants to say something, but go ahead first.

Mr. Kawakami: And maybe she can contemplate what I'm going to say in her response, but if that's the case, there's nothing to stop say anyone of you from making the same inquiry to the county attorney's office. You understand what I'm saying? If I'm getting information from the county attorney saying, is this bill legal, there's nothing to stop any of you from making that same inquiry. It's about what questions you're asking, to whom you're asking. You understand what I'm saying? There's nothing that would block...say if I'm inquiring about hey, is this proposal to allow vendors to sell these reusable bags at the sunshine market, is that legal? That's not to stop any one of you from making the same inquiry.

Committee Chair Yukimura: Well that's why he says it should be made available to everyone.

Mr. Kawakami: But then...

Committee Chair Yukimura: Because it is a subject that everyone has to deal with and...

Mr. Kawakami: Yeah, but this...this is still politics. And this is still...I mean come on. I mean I just don't see the protection of my privacy in this thing. I mean there should be some at least...

Committee Chair Yukimura: What is private though? I mean because...

Mr. Kawakami: Well if I'm requesting a confidential communication from the attorney, that would be private.

Committee Chair Yukimura: Yeah, but it's a subject matter of public concern and public...I mean for example the attorney general's opinions are all made public.

Mr. Kawakami: But that's the attorney making it public. If our county attorneys want to make things public...

Committee Chair Yukimura: Well, the reason this is being proposed is because the county attorney has advised, I think, Councilmember Bynum that he would prefer that the council set a policy.

AMY ESAKI, First Deputy County Attorney: Chair Yukimura, I think the attorney general's office, they do have some opinions that are made public but some opinions that are not made public. That's our understanding.

Committee Chair Yukimura: And what is the guiding line for them to determine that.

Ms. Esaki: I'm not sure exactly how they determine what goes public, but I know that not all their opinions are public opinions.

Committee Chair Yukimura: So are you aware that it is a county attorney's advice to Councilmember Bynum that he wants a policy established by the council?

Ms. Esaki: That I'm not sure of. I'll have to go check whether any opinions (inaudible)...

Ms. Nakamura: I'd like to know what is the problem that we're addressing here.

Committee Chair Yukimura: There is none. Oh, well the question is sometimes...there's no procedure now for releasing county attorney opinion and they are opinions that...I mean you will find on ag land, for example, you get a county attorney opinion, it's not available to the public even though it's a matter of interpreting the law. And so the public is wondering why are we acting a certain way and we're acting a certain way because we've been advised about the law and

they have no idea. And so the issue is why would the public not be able to access. There's some need for that. But it would be a decision of the council to release the bill. It wouldn't be automatically released. Right now...

Ms. Nakamura: The bill or the legal interpretation.

Committee Chair Yukimura: Yes. So right now there's no policy for release. Whereas on Maui County, it's on the web and I don't know...I think the county attorney does make a decision and there may be an issue of county liability.

(Inaudible.)

Committee Chair Yukimura: No, not all and so see, but somebody's making a decision somewhere and right now all of the county attorney's opinions are not available.

Mr. Kawakami: You know, in this day and age, we're all held accountable as elected officials and I still feel that integrity is going to play a key role in how disburse our attorney-client communication. For example, I've had inquiries sent over to the county attorney's office and I've said, hey, you know what, go ahead circulate this memo to all the committee members or all the councilmembers. And I think that there should be some latitude on how we conduct ourselves and if you choose to hold your information back, then that's the kind of legislator you're going to be and I think right now there's nothing to stop us from sharing our communication with other councilmembers if we choose to unless it's a violation of the Sunshine Law that I'm not aware of.

Committee Chair Yukimura: So...

Mr. Kawakami: Because I know...I know where this is coming from and yet there have been communications sent over to the individual pushing this that has not been released to everybody. So it's almost like a matter of practice what you preach. So I'm just saying that there's nothing to stop us from sharing this communication as it is. What this does is make it a requirement and there are times that maybe I'm not going to be so comfortable circulating this information to all of you.

Committee Chair Yukimura: What this does is...I don't...let's just try to understand what this does. It says, request for opinions made by individual councilmembers to the county attorney and opinions received pursuant to that (I'm reading Rule 17) shall be privileged communications between the councilmember making the request and the county attorney if the subject matter of the request and opinion have not been placed on the council agenda. But once it's placed on the agenda, I think this particular position says that it becomes a matter of council ownership, not individual councilmember ownership. And therefore, whatever information goes to one should go to all. Now, I mean I can see where we might have trouble drawing the lines between what's the subject matter. You know subject matters can be defined generally or specifically. But if this is...so and this doesn't involve actually communicating the opinion to the public, excuse me Councilmember Nakamura, that's the next step and it does require a policy as well. But I think there were times where for example the chair might have gotten a county attorney opinion that wasn't shared when it was relevant to everybody. So that's the issue and I don't know that there's any absolutely right answer or wrong answer. There's different ways of sharing it as Councilmember Kawakami has said.

Ms. Nakamura: And that's where the other rule takes into effect where the rule that says that the chair's role is to disseminate the information, whatever communications to the appropriate parties.

Committee Chair Yukimura: Yes, yes.

Ms. Nakamura: I mean do we need a separate rule if we already give that responsibility to the chair?

Committee Chair Yukimura: But where a councilmember has asked for an opinion, it'll come straight back to the councilmember. It will bypass the chair the way right now that our communications are.

Ms. Nakamura: I see.

Committee Chair Yukimura: So...

Ms. Nakamura: I think I would agree with Councilmember Kawakami's opinion that I don't know if we...maybe we need an internal policy rather than putting it in the rules.

Committee Chair Yukimura: This is internal policy. The rules are internal policy.

Ms. Nakamura: But it could be an internal memo on how we deal with it. I don't know if this is...well...yeah?

Committee Chair Yukimura: I don't know, it might violate Sunshine Law. And we can...not do it, I mean just plain not do it. But the...I mean...in terms of...

Ms. Nakamura: Okay, maybe since we're on Rule No. 2, my...I guess I'm not...for the reasons you described, Derek, I guess I'm not comfortable with that (4), with that addition.

Committee Chair Yukimura: Okay, I think this one was meant to apply to county attorney's opinion that has been requested by the council, so not a councilmember.

Ms. Nakamura: Okay.

Committee Chair Yukimura: So it's like the council has asked, you know like we send questions when something comes up out of committee discussions and so we all agree that a question needs to be sent to the attorney. So the county attorney's opinion then comes back and it goes to everybody, okay. So it's owned by the council. It's not owned by a specific...

Ms. Nakamura: So this is to authorize the public release?

Committee Chair Yukimura: Yes, yes.

Ms. Nakamura: Is that what we mean by this?

Committee Chair Yukimura: Yes, yes.

Ms. Nakamura: Okay.

Committee Chair Yukimura: And that's what I was referring to mistakenly.

Ms. Nakamura: Okay.

Committee Chair Yukimura: But this would establish a policy for release to the public of an opinion that has come to the council as a council opinion, not an individual councilmember.

Ms. Nakamura: Okay, I think we were getting that...we're mixing up apples and oranges.

Committee Chair Yukimura: I have mixed it up and I apologize.

Ms. Nakamura: So why don't we just put, to authorize the public release of opinions.

Committee Chair Yukimura: Good.

Ms. Nakamura: We're assuming all of the councilmembers have that opinion in hand.

Committee Chair Yukimura: That's correct.

Ms. Nakamura: Does that...I mean I guess I didn't understand what this was about, so.

Committee Chair Yukimura: Right and neither did I actually. I mean I wasn't making clear distinctions.

Ms. Nakamura: Is that...Derek, is that...

Committee Chair Yukimura: So basically this rule is saying if two-thirds, if a super majority of the council wants to release the opinion, then we would allow it. And it would be, of course, after discussion in executive session because until then it's not released.

Ms. Nakamura: Okay, that's fine with me. So we can go on...

Committee Chair Yukimura: So Councilmember Kawakami, just with respect to this and we'll go to Rule 17. I'm sorry, they are two separate things.

Mr. Kawakami: You know, I'm...there are going to be times when we put our county at risk by releasing county attorney opinions, in my opinion.

Committee Chair Yukimura: There may be, but who judges the risk will be a super majority of the council because there will be...if we don't have a process for release, there will be opinions that don't...have very minimal release that cannot be released. So who's the best judge of the risk is the question and we're saying here not a regular majority, but a super majority. And you would have the chance to discuss it with the county attorney, the risks with the county attorney. But somebody has to make the decision and the question is who? I can suggest that if the two of us agree, why don't we move it forward.



Mr. Kawakami: You guys can move it forward, yeah, because I'm not going to support it.

Committee Chair Yukimura: And then have a larger discussion with the larger Committee of the Whole.

Mr. Kawakami: Sure.

Committee Chair Yukimura: Okay, okay, thank you everybody. I think these are good discussions and I apologize for confusing it in a bit. I'm going to...let's keep moving with Rule 3 and we'll get to Rule 17 soon enough. Okay, so we're on Rule 3 now. So there's just some additions. Let's see the first real substantive one is (a)(9) and it just defines the relationship between the clerk's office and it shows that the chair has, on behalf of the council, the oversight. And it includes some of the, I think, duties that were not included. Anybody have any trouble with that?

Ms. Nakamura: No.

Committee Chair Yukimura: Councilmember Kawakami?

Mr. Kawakami: No.

Committee Chair Yukimura: Okay. Then the next one (a)(11) is a procedure as to how communications would be sorted or referred. And I think your question was about the confidential communications to a councilmember, Councilmember Kawakami? When we initially discussed it you said, what about...and I think there's an effort here to distinguish that.

Mr. Kawakami: Yeah.

Committee Chair Yukimura: This is the last sentence in paragraph (11), all communications addressed to an individual councilmember shall remain sealed or unopened and be immediately referred to the councilmember, not be available to other councilmembers without the consent of that councilmember to whom the communication was addressed. Okay? So any problem with (11)?

Ms. Nakamura: Just this sentence before that all communications addressed to the council shall be numbered and made available to the public upon request except as otherwise provided by law. What does that refer to?

Committee Chair Yukimura: Our staff attorney...you know, you need to be at a mike. Sorry, maybe you could join Amy over here and share her mike or yeah, if there's a mike there that's fine.

Mr. Topenio: Testing, testing, testing.

Committee Chair Yukimura: Oh okay, thank you very much.

Mr. Morimoto: An example that comes to mind is an attorney-client communication. Let's say special counsel for the county addresses a letter to the council. You don't necessarily want that to be made public communication.

Ms. Nakamura: Okay, thank you.

Committee Chair Yukimura: Thank you. Any other questions of our attorney? Okay. Any more discussion on (11)? Okay.

(12)? We discussed it in our first meeting. It came from one of the other counties. It's just a reminder of an ability to do that basically and supports, I think, our chair right now who has wanted to stay in communication with us about various procedural matters that do not require council approval. So it's not anything related to council decision making, but it's some of the things...housekeeping and otherwise that the chair wants to talk to us about. Any discussion?

Mr. Kawakami: Yeah, to me it just seems...I know the intent, but I just...do we really need a formal rule for informal discussions? Because that's what this is. It's an informal discussion we're creating a rule on. To me it's...

Committee Chair Yukimura: To me it's a really important distinction for the public so they know that it's not...we're not...we're having a meeting, but it's not violating Sunshine Law because it's about these issues, and I have to say that in all the time that I've been on the council for many years, we have not had discussions about internal procedural matters and those are actually important for the functioning of the council. So I like that there's this framework that supports it. It's not necessary, but it helps the...

Ms. Nakamura: To say it's okay to do it.

Committee Chair Yukimura: Yeah.

Ms. Nakamura: It came out of, I think, Maui or...

Committee Chair Yukimura: Yeah, yeah. It just shows that there is this other kind of meeting that is useful to hold.

Ms. Nakamura: And if the chair chooses not to, that's up to that person.

Committee Chair Yukimura: Yeah, it's totally discretionary because it's as needed. It's actually good guidance for a chair, though. Any other discussion?

Mr. Kawakami: No, but I do know that the chair is already, in the rules, the liaison in dealing with the clerk's office. So what are we saying in this rule? That we're now creating a rule that would allow him to have an open meeting with all six councilmembers and himself with the staff and we can discuss operational issues? Is that what it does?

Committee Chair Yukimura: Mm-hm and it doesn't have to be with all staff. I mean it can be designed as the chair feels is appropriate. It can be just with councilmembers if that's what he wants or it can be with staff.

Mr. Kawakami: Okay.

Committee Chair Yukimura: Any more discussion? We will have further discussions with all the councilmembers as well. I see a sign from the public, but I'm going to finish this rule and then allow people to speak on the whole rule, okay. So and then there's additional duties of the vice chair and I think that was

Councilmember Nakamura's request to just include from other counties a delineation. And then...and I think it was also for the deputy and there is a deputy clerk in a later section, there's a...

Mr. Kawakami: You know I just have one comment.

Committee Chair Yukimura: Yes.

Mr. Kawakami: Under item (b)(3) it says, to serve with the chair as spokesperson and representative for the council. I'm not sure if the chair is designated as our spokesperson. And the only reason why I bring this up is because KIUC has a strict policy that not necessarily all of us agree with that the chair is the spokesperson for the board and what that has done in the past is it has restricted individual councilmembers or board members from making comments to the newspaper when they're...you know when the reporters are making inquiries of them, so...and I just don't see how the chair can be the spokesperson or the vice chair can be the spokesperson if we're split on an issue. You know the way that we speak is through resolutions, in my opinion, and so if we have a public statement, we usually do it through resolution, but there's going to be a...you know this is one of the rules that people are trying to move away from in KIUC, to have that one spokesperson and there was a lot of controversy as to whether that was putting a gag order on the rest of your members.

Committee Chair Yukimura: Okay, so that's how KIUC does it. I don't think to designate a chair as a spokesperson means that nobody else can speak.

Ms. Nakamura: You know, I don't think we even have it here under the chair's role to be the spokesperson, so we could just delete that line.

Committee Chair Yukimura: I think we should delete that line.

Ms. Nakamura: Why don't we do that?

Committee Chair Yukimura: Because to serve with the chair is also confusing, but I think the chair is naturally a spokesperson for the council. I mean the chair is invited to various...and this is not for any official policy but just to represent the council in many...just like the mayor is the spokesperson for the county. So I don't think we can get away from the chair being a spokesperson for the council. I think he's inherently seen as that. But when you couple it like KIUC does that says nobody else can speak, then I think it creates a lot of difficulties. I don't think we're implying that at all.

Ms. Nakamura: So just delete it, if that's okay.

Committee Chair Yukimura: Yeah, I think that's good.

Ms. Nakamura: All right, okay.

Committee Chair Yukimura: Any other comments? I mean I don't even know if we have to list any of this. I think it is an appropriate function of the vice chair, but what is the pleasure of the committee?

Mr. Kawakami: I think the duty of the vice chair is to fill in for the chair's role in his or her absence. That may be the easiest way to address it.

Ms. Nakamura: That's fine.

Committee Chair Yukimura: And I think that was somewhere, wasn't there? Or maybe it was just in the meeting role.

Ms. Nakamura: You know how we have it under the deputy county clerk, we could use the same language there.

Committee Chair Yukimura: We could use that same language. Why don't we just do that? Okay, use the language for the deputy county clerk. Good.

(Inaudible.)

Committee Chair Yukimura: Yeah, that's what I...in terms of the meetings I know...okay, wait. 3(a). Wait a minute.

Mr. Kawakami: Oh yeah, in the first...in Rule 3(a), the chair shall be the presiding officer of the council. In the absence or disability of the chair, the vice chair shall act as the presiding officer. So that kind of gives you the latitude to operate and fulfill all his duties and responsibilities. In the absence of you it becomes the Finance Chair, yeah?

Ms. Nakamura: Yeah.

Mr. Kawakami: The chair of finance.

Committee Chair Yukimura: Yeah, I mean there was a...this section actually I think was primarily focused on the conduct of meetings, the presiding officer. And the language we've added in (9) sort of begins to flush out some of the larger duty as the administrative officer. So it's kind of mixed up here, but that's okay. And we could...you'll see that the vice chair's duties as outlined in the sections that we are eliminating envision a role that's a little bit broader than just the conduct of meetings.

Mr. Kawakami: No, I think...with all due respect, I think the language that we added under Rule 3 under the chair's duties and responsibilities go outside the scope of just running a meeting also.

Committee Chair Yukimura: Right.

Mr. Kawakami: Say for example, they are now the...they need to provide for the coordination of all administrative activities and all the...how we disseminate communications, to hold a chair's meeting. So the way I'm reading it is if the chair is not around for whatever reason, the vice chair is now the presiding officer of the council, which is responsible for all these...

Committee Chair Yukimura: Right, so that ties it together.

Mr. Kawakami: Yeah.

Ms. Esaki: (Inaudible.)

Committee Chair Yukimura: Can you speak in the mike?

Ms. Esaki: Rule 1(a)(3) refers to 3.07 on the charter, and the charter states that the council shall also elect one of its members as vice chairman, who shall act as the presiding officer in the event of the chairman's absence.

Committee Chair Yukimura: Okay, so we're covered. So we don't need any language. All right, good.

Mr. Morimoto: So we'll be deleting (b) in its entirety?

Committee Chair Yukimura: Yes, because we feel that it's covered.

Mr. Morimoto: Or did you want language to state that the vice chair is (inaudible).

Committee Chair Yukimura: Yeah, you know actually I think we should allow the...I mean maybe it's without saying, but this idea that shall be given assignments by the chair is a good language. I mean because it's not just about in his or her absence or disability. It's about even when the chair is in...is functioning, the vice chair still can assist. I mean for example you know the chair just asked me to help with our team building meeting, stuff like that. So why don't you explore some language either adding on to what exists at the beginning or just another line like the deputy/vice chair, okay? All right, let's keep moving on.

So we're now on county clerk and communications. Okay, we're just adding that same proviso that is about communications under the chair is also here to protect the confidential communications addressed to individual councilmembers and I guess these are additional functions that we took from other councils to just clarify the duties of the clerk. And then in (e) there's the deputy clerk. Any discussion on this?

Mr. Kawakami: I just know that there are times when, say for example if we're getting a communication back from a department within the administration on an inquiry that we made, there's going to be times when the communication is going to be addressed to me individually, but whatever analyst was assigned to it will look in it and because they know that they're assigned to it, so I just want to make sure that this doesn't operationally present any challenges, yeah, to the current way things are being done. I think the intent behind this is that if something is addressed to me, the chair is not going to open it up and send it all to you guys, but the staff should have the flexibility if they know, hey, you know what, they're waiting for this communication to come through, they open it, they usually make their copy I believe, and then they send it to me. And then that way I'm covered.

Committee Chair Yukimura: So perhaps we should just eliminate this addition and leave the existing language to forward at once to the proper parties all communications and other matters, either directly or through a committee as the case may be?

Mr. Kawakami: Yeah I know at one point I brought up the concern that I was...you know how do we handle this confidential information? So it's like a double-edged sword how we handle this, yeah.

Committee Chair Yukimura: Right, right.

Mr. Kawakami: At one end we're trying to protect the individual.

Committee Chair Yukimura: Because where you say it shall remain sealed or unopened...

Mr. Kawakami: That literally means the staff cannot even...

Committee Chair Yukimura: And shall not be made available to other councilmembers or parties.

Ms. Nakamura: Was this your amendment?

Mr. Kawakami: No, I didn't introduce it.

Ms. Nakamura: Oh, okay.

Committee Chair Yukimura: No, no, this is...but he raised the issue of confidentiality and how that was to be treated.

Ms. Nakamura: Yeah, yeah.

Committee Chair Yukimura: Actually though it says without consent of the councilmember. So the staff referral is consented to by you.

Mr. Kawakami: Yeah.

Committee Chair Yukimura: So that would be okay too. I mean it doesn't bar it going to the staff.

Ms. Nakamura: Where did this come from? I mean I'm just...

Committee Chair Yukimura: It came out of Derek's concern about confidential communications.

Ms. Nakamura: Oh, oh, I see, okay.

Mr. Kawakami: Can I ask the staff a question?

Committee Chair Yukimura: Yes.

Mr. Kawakami: Is this amendment going to affect the way things are currently being done?

(Inaudible.)

Committee Chair Yukimura: Okay, so staff is pointing out—thank you, Jade—that the chair did do a memo regarding confidential communications and that they will be unopened. But what you're talking about, communications from the administration, are not...I don't know if they're actually labeled confidential. They come back in response to a request that we sent out. Sometimes they are confidential and in those cases they are not opened by staff? They are?

(Inaudible.)

Committee Chair Yukimura: Do you want to talk in here?

JADE TANIGAWA, Council Services Review Officer: If the information is stamped confidential and it's personal to a councilmember, the staff will not open it. But the new memo is saying if it's confidential, we will make...we'll open it, make sure that there's a copy in records at the least, and then direct it to the councilmember. So there's a confidential copy in records and then whoever it's addressed to it's provided.

Ms. Nakamura: Is the only person who gets it.

Ms. Tanigawa: I believe so. And then at that point you folks decide.

Committee Chair Yukimura: Okay, so the committee member is not the only one who sees it because there is a copy made for the records. But it is filed...everything is filed in a confidential file that does not go to the public or to anybody else. It's treated...it's there for the record, but it only goes to the councilmember. It's under lock and key. Okay. So, that's how it's addressed, so maybe we don't need this.

Mr. Kawakami: It's addressed here, yeah?

(Inaudible.)

Committee Chair Yukimura: Okay, so this memo was done in February under the leadership of our new chair and maybe that's...is that an acceptable way to handle these things?

Mr. Kawakami: For me it is, yeah, because I would rather rest assured that at least the staff has made record of it, yeah.

Committee Chair Yukimura: Okay, okay.

Mr. Kawakami: That's going to put the staff in a sticky spot sometimes.

Committee Chair Yukimura: Otherwise this language could be a little sticky, yeah.

Mr. Kawakami: I mean I can tell you that the staff is going to get blamed if something gets leaked or you know how that does, yeah? I mean there's going to be people that leave stuff out and somebody's going to read it and that's the only thing that I'd be worried about.

Committee Chair Yukimura: Well, I mean there's another way to handle it in that it just goes, but then there may not be a record made of it.

Mr. Kawakami: And to me, that's almost like how responsible you are as an individual, yeah, if you're messy and you get mail...

Committee Chair Yukimura: Lose it.

Mr. Kawakami: ...and you don't open it until like three weeks later and then you're asking the staff, hey, where's this. And then they say, hey, you know what, check your in-box. Or if you make it very clear that hey, this communication is confidential, but please cc the analyst that's working on it, but. It's not a huge concern that I want to tie up too much time with.

Committee Chair Yukimura: Right, so should we just remove that?

Mr. Kawakami: It's not in there as it is anyway, right?

Committee Chair Yukimura: It's...remove the addition is what I'm asking.

Mr. Kawakami: I think so. I think the way that the chair has...

Committee Chair Yukimura: Handled it.

Mr. Kawakami: Handled it.

Committee Chair Yukimura: Is satisfactory?

Mr. Kawakami: For me at least as one person.

Committee Chair Yukimura: Okay, all right, let's move that...remove it from (d)(2). Okay, anything else about this rule?

Mr. Morimoto: Excuse me.

Committee Chair Yukimura: Yes.

Mr. Morimoto: Then given that you're going to be removing or deleting the language from (d)(2), should we also be deleting that language in (a)(11)?

Mr. Kawakami: If it's redundant, I would say yeah.

Committee Chair Yukimura: It's regarding the chair's referrals, right? What number is it, Peter?

Mr. Morimoto: (a)(11), the last sentence, all communications addressed to an individual councilmember shall remain sealed or unopened and be immediately referred to the councilmember and shall not be made available to other councilmembers or other parties without consent of the councilmember to whom the communication was addressed. So given Chair Furfaro's memo, which apparently covers these kinds of communications, can this sentence be deleted as well?

Committee Chair Yukimura: Yeah, I guess so. All right. Anything more on this rule? If not, I think I will now suspend the rules for up to 3-minute testimony and then we're going to take a break, sorry.

There being no objection, the rules were suspended.

KEN TAYLOR: Chair and members of the committee, my name is Ken Taylor. In my submittal of February 3 in reference to Rule 3(c), I suggested that you add the words, "clerk shall post agendas and all back-up material on website and clerk shall maintain a complete board packet at the front desk." That



hasn't been really discussed, but I think it's important and again, you now have a copy of the County of Santa Barbara's document and if you look at the right-hand side of any agenda item, you'll see a file number and when you click on that file number, you get the documents backing up the item on the agenda and so again, this is, I think, an important thing. It's not that difficult to do. There may be some changes needed in procedures as to how things are done here. But I think it's very important and...to let the community know and understand what's going on. And in many cases it may even eliminate some of our testimony because if you can read the backup material and understand what's happening, there's no need to speak on that agenda item or maybe the questions that you have are clarified within the documents and so I think it's important that that be considered and added to Rule 3(c), which is now in your current draft 3(d).

And I'd just like to clarify something in reference to my document that I turned in February 3. Earlier when staff asked or when one of you asked if I had a copy of it to make a copy of and I passed it along, but because last week you folks had changed 120 days to 90 days in reference to an item for Rule 10(a), I had adjusted my 120 days to 90 days and staff misunderstood that I was suggesting to make a change. So I think reality is my document that was stamped in on February 3 is accurate to my information. So just to clarify for staff.

Mr. Topenio: Three minutes.

Committee Chair Yukimura: I would like another copy of that. Somehow I don't have one. Thank you, Ken. So we're...I'm sorry, Ken, if you could. The wording you just proposed regarding the agenda on the website, is that in your February 3?

Mr. Taylor: No, I just gave...you just got after reading the issue on public comment period, I read it out of the County of Santa Barbara Board of Supervisor's meeting.

Committee Chair Yukimura: Right, that's...yes.

Mr. Taylor: You've got that. If you look at any of the agenda items in that document, on the right-hand side there's a file number.

Committee Chair Yukimura: I understand that, but I'm interested in the wording that you proposed for the duties of the clerk.

Mr. Taylor: Oh, okay, my suggestion was that under Rule 3(c), "the clerk shall post agendas and all backup material on website and county clerk shall maintain a complete board packet at the front desk."

Committee Chair Yukimura: All right, thank you. I have that language. Thanks very much. Okay, is there any other testimony on this rule that we're presently considering?

Ms. Harmon: What rule?

Committee Chair Yukimura: Rule 3. Okay, if not, the meeting will come back to order.

There being no one else wishing to testify on this matter, the meeting was called back to order, and proceeded as follows:

Committee Chair Yukimura: And I guess...you know we already passed a resolution, but if we...I think it's appropriate to put it in the rules. We could ask the clerk to come and tell us his timeline; I'm interested in knowing that because that is something that the council has mandated pretty much. So maybe we'll take a recess and I'll ask the clerk to come and give us his timetable on that, okay? And then we can talk about whether we want to add that to the rules. All right, so we're going to take a 5-minute recess.

There being no objection, the meeting was recessed at 3:22 p.m.

The meeting was called back to order at 3:35 p.m., and proceeded as follows:

Committee Chair Yukimura: Rules committee is back in session and we're still on Rule 3. I think we've gone through all except the proposal from public testimony that we add a rule 3(c) that would read that the clerk shall post agendas and all backup materials on the website and shall maintain a complete board packet at the front desk. Well, what's not a board? It's a complete agenda packet at the front desk.

Ms. Harmon: Kind of hard to hear.

Committee Chair Yukimura: Hello.

(?): No, it's not on.

Committee Chair Yukimura: Oh, it's not on.

Mr. Topenio: Okay.

Committee Chair Yukimura: Oh, okay, better? So the meeting's back in order and we're on Rule 3 and the last item for consideration is the rule suggested by the public testimony that the clerk shall post agendas and all backup material on website and shall maintain a complete agenda packet at the front desk. It's my understanding that there is a complete agenda packet at the front desk now and...

Mr. Taylor: Never seen it.

Committee Chair Yukimura: You've never, okay so. It's at the front desk. Is it on the counter or do people have to ask for it?

(Inaudible.)

Committee Chair Yukimura: Oh, no, no, it's not...are you...okay. So I'm going to suspend the rules just to have Mr. Taylor answer your question, please. Your proposal that it be at the front desk is not to have people take the copies with them. It's just to have it to refer to. So maybe it would be on like a flip chart that people can look at that's tied to the counter so it can't walk away, something like that?

There being no objection, the rules were suspended.

Mr. Taylor: Well, you can tie it to the counter if you like, but I don't think it...well, I suppose it could walk away. But the purpose of it is that you know as well as I do that not everybody has access to a computer and so when I

suggest that the agenda and the backup material be on the website or agenda of Santa Barbara County, that's one thing. But for the individual that does not have access to the computer, he can come in and he has the ability to look at...I mean sometimes people don't know what to ask for without seeing it. When your board packets are put together, there shouldn't be that much difficulty in making one more to have at the front desk.

Committee Chair Yukimura: Okay, so what I'm hearing Mr. Taylor suggest is a reference copy.

Ms. Nakamura: That's what they say they have.

Committee Chair Yukimura: Yeah and it's there. You have to ask for it. I mean it exists now, today, but you have to ask for it.

Mr. Taylor: Well, many times in the past when I've asked to see the paperwork behind a document on the agenda, I've been told over and over again that's all we have. And yet (inaudible) after listening through...going through the meetings that you folks have a lot more material than what's been made available to the public and I'm not asking for information that's privy to closed session. I'm only talking about the agenda item, etc.

Committee Chair Yukimura: Okay, now, some things come to us as supplements to the agenda. They are not attached to the agenda. So for example, public works, there's an agenda on the item and that day they bring in something. So it's not part of the agenda.

Mr. Taylor: But when an item...and this happens frequently and you know here at the council meeting papers are passed out. And until more recently it's been very difficult to see those copies and it's been a little better with the chair and the new council as to making extra copies and making available to the public, but I think it's understandable when items come to the committee or to the council...

Committee Chair Yukimura: Okay, but you're talking about more than what is considered to be the agenda with its submittals. So I just wanted that clarification because what you're asking for may not be addressed by this rule that says agenda with attachments because they may not be the agenda with attachments. They may be later submittals and I can see why you would want them, but I'm just having to clarify what the rule covers and what it doesn't, okay? And I have to keep moving. So go ahead.

Mr. Taylor: Well I just want one more thing is that again in Santa Barbara County when late submittals come in, after the agenda's been posted and all of that information is there, if something comes in prior to the hearing, that late submittal packet is also attached to the reference copy at the desk and should be noted at the beginning of the meeting that that exists.

Committee Chair Yukimura: Okay, thank you very much. I don't know if we're going to be able to address it as a rule, but I think it is something worthy of looking into to see if we can logistically make that happen. So, any more testimony? Then we'll come back into session.

There being no one else wishing to testify on this matter, the meeting was called back to order, and proceeded as follows:

Committee Chair Yukimura: Councilmember Kawakami, did you have some questions or comments?

Mr. Kawakami: No and that's a subject matter that the chair can hold in his chair's meeting to discuss procedural and operational matters that don't require council action. We can just make a note of...that this would be a good thing so...and that's the appropriate place to handle it.

Committee Chair Yukimura: Yeah or we can make it a rule which would bind us to making it happen, but right now, we probably should consult with staff and see what we can...see what all the issues are before we make it into a rule. But in terms of the council agenda and its submittals, whatever the council gets that is available and sometimes it's not everything. Okay, so the question about the website, backup materials on website, that would be a wonderful thing and I think we've already passed a resolution that it will happen. I think the proposal is that they'd like to see it in the rules itself. I asked the clerk if he could come and just let us know where we are on it and he has testimony that has to be submitted at 4 p.m., but he's coming after 4 o'clock. Is he?

Mr. Morimoto: (Inaudible.)

Committee Chair Yukimura: Okay, all right, well maybe at 4 o'clock you can check? Okay. So other than that issue, we're all okay with Rule 3. Okay, let's move on.

Mr. Kawakami: I have one more concern.

Committee Chair Yukimura: Yes.

Mr. Kawakami: I want to take out (8) under Rule 3, to maintain order among those members of the public present at council meetings. I have a feeling that this is the chair's job, not the county clerk's job.

Committee Chair Yukimura: Yeah, it sounds like a sergeant-at-arms job actually.

Mr. Kawakami: Yeah.

Committee Chair Yukimura: Okay, I don't see a problem. I mean I don't know that...we usually call the police.

Mr. Kawakami: Or Mel Rapozo.

Committee Chair Yukimura: All right, remove that.

Mr. Kawakami: Yeah.

Committee Chair Yukimura: Okay? Any objections? All right, next. May we go on or did you have any other concern?

Mr. Kawakami: That's the only one I had. Rule 4?

Committee Chair Yukimura: All right. Rule 4, just a typo actually, kind of a funny typo, and then let's see, and then a session on special advisory committees. That's on page 11.

Mr. Kawakami: Okay, I'm good.

Committee Chair Yukimura: Okay. Any discussion on that?

Ms. Nakamura: On page 10, (d)(1), it says the advisory committee shall consist of at least one councilmember from the council or standing committee and may include members from the private sector and representatives from other political subdivisions.

Committee Chair Yukimura: So wait. Okay, so it's (d)(1). Thank you.

Ms. Nakamura: Can we also add private sector, non-profit...and non-profit sector?

Committee Chair Yukimura: Okay. I thought private sector would include non-profits, but you...it doesn't hurt. From the private sector...

Ms. Nakamura: Yeah, you could construe it that way also.

Committee Chair Yukimura: An advisory committee shall consist of at least one councilmember from the council or standing committee and may include members from the private sector...private and non-profit sectors?

Ms. Nakamura: That's fine.

Committee Chair Yukimura: And representatives from other political subdivisions. And we can say...let's see may...shall consist of and may include. So that's...okay. So we'll say private and non-profit sectors, okay? Good. Any other additions or concerns? Okay, if not let's move on.

I think Rule 5 just has a correction.

Rule 6...

Ms. Nakamura: Can we also add under Rule 5(c), voting required where you...right after your charter section reference, can we also put "and Rule No. 18"? And Rule No. 18 is the nepotism.

Committee Chair Yukimura: Okay, any objections to that? If not, can we move on to Rule No. 6? We just have postpone or defer. That's just because we usually use the word defer I thought it would be good to put it in there.

On page 14, no member may speak longer than five minutes subject to an appeal to the body, unless the member's the maker of the motion or the sponsor of the matter pending, in which case the member may speak for up to 20 minutes or in reply, but if in replay not until every other member...

Ms. Nakamura: This is a very long sentence. If there is a way to break it down into shorter sentences. It's kind of difficult to follow it all and I wasn't clear what the intent was at some point, so I...actually I have some suggested language.

Committee Chair Yukimura: Okay, fine, what is it?

Ms. Nakamura: So no member may speak longer than five minutes without leave of the presiding officer subject to an appeal to the body. And then I think we said we wanted to give the maker of the motion some additional discretion to speak. So we could start off with "the maker of the motion or sponsor of the matter pending may speak or reply to questions for up to 20 minutes."

Mr. Kawakami: You guys don't want to change that to 10 minutes instead?

Ms. Nakamura: That, you know I just...I don't know how we came up with the 20. How did we...

Committee Chair Yukimura: Well we talked about a possible PowerPoint presentation and a complex issue, I think.

Ms. Nakamura: Yeah, yeah. Up to, yeah and then he or she may reply to questions beyond 20 minutes with leave of the presiding officer after every other member choosing to speak has spoken. So you do your 20-minute PowerPoint and then you can reply to questions. But I think the presiding officer should have discretion and...

Committee Chair Yukimura: Well then it also makes more sense in a sequence to have the presentation, answering of questions, and then comments from people and a full discussion because you want clarification and people...right after the PowerPoint is the logical time people might have questions.

Ms. Nakamura: Yeah.

Committee Chair Yukimura: Now, it could turn into comments and arguments, but...I see Representative Kawakami smiling. So if I may just clar...see if I got this straight. No member may speak longer than five minutes without the leave of the presiding officer subject to appeal of the body. Okay. If the member is the maker of the motion or the sponsor of the matter pending, he or she may speak for up to 20 minutes.

Ms. Nakamura: That's fine.

Committee Chair Yukimura: And then you just have questions and answers, and the chair controls it by his or her discretion. Well, shall we try that and see how it works? I mean, okay, so we just simplified it. So, no member may speak longer than five minutes without leave of the presiding officer subject to appeal to the body. If the member's the maker of the motion or the sponsor of the matter pending, he or she may speak up to 20 minutes. Okay? Anything else in Rule 6? Okay, if not, onward.

Petitions, okay. Mr. Taylor, by the way, wanted me to know that they all left to go to the charter commission meeting and it wasn't because they didn't like us. Rule No. 9, petitions. Any person may petition the council and the petition shall be disposed of by the chair and...I thought we were going to change that word disposed.

Ms. Nakamura: Here's some suggested language here. The petition shall be referred to the appropriate...the chair shall refer the petition to the appropriate standing committee chair for disposition.

Committee Chair Yukimura: You can just say, shall refer the petition to the appropriate...

Ms. Nakamura: Committee Chair.

Mr. Morimoto: The reason that it's worded the way that it is is that sometimes petitions really aren't appropriate to any standing committee.

Ms. Nakamura: Okay.

Mr. Morimoto: And the appropriate action may be to not take any action at all or to...

Ms. Nakamura: Okay.

Committee Chair Yukimura: To just have it on the public record?

Mr. Morimoto: Right because there may be, you know the petition may relate to something that's not even within the jurisdiction of the council.

Ms. Nakamura: Oh, okay.

Mr. Morimoto: One example is sovereignty and I think...I mean the council basically, as far as I can tell, has no jurisdiction to entertain questions about sovereignty and there may be other topics that are not necessarily appropriate for this body to entertain.

Committee Chair Yukimura: Okay, so the way it is now, the petition shall be disposed of by the chair including its referral to the proper agenda if deemed appropriate. Now so that the...the incident that riled up the public was a petition submitted by Ms. Harmon, I believe, and do you know what the subject matter was? Oh, it was the...

Mr. Kawakami: Waimea, the rezoning of the open space, I think so.

Committee Chair Yukimura: No, I think it was the issue of agenda items on the website.

Mr. Morimoto: That's correct.

Mr. Kawakami: Oh.

Committee Chair Yukimura: And that was an appropriate matter for the council to deal with. But in the chair's discretion it was not put on the agenda.

Mr. Morimoto: Right.

Committee Chair Yukimura: And so they were concerned about that situation where the chair has sole discretion and therefore would hold up something that is appropriate for council discussion at least and possible action. And the appropriate challenge would be to challenge the decision of the chair to not put it on

the agenda, but that decision is invisible. It's not anywhere where you can actually challenge the decision of the chair. So...I mean one thing—I mean I'm really just brainstorming here but— would be to have the chair at least circulate to all councilmembers a list of all petitions received every month or something. So then a councilmember could make a request that it be put on the agenda. I mean that's...if in terms of...what's the word...remedies for inappropriate action.

Ms. Nakamura: But in that case didn't the councilmembers know that the petition was submitted? So...

Committee Chair Yukimura: But they might have informally known. There was nothing in writing that it was officially told that a decision was made to not put it on the agenda and until you have that point that a decision was made, you can't challenge the decision of the chair. So by circulating a communication indicating all the petitions and the chair's disposition of it, you know just to councilmembers internally and I don't know if there's any sunshine implications of it. Are there any for if the council were to...I mean the council chair would be required to circulate monthly a list of petitions that he's received and his disposition of it?

Ms. Esaki: Among the councilmembers?

Committee Chair Yukimura: Yeah.

Ms. Esaki: Just among the councilmembers?

Committee Chair Yukimura: Yeah, just as an internal communication, but that would at least define his decision which could then be challenged. Otherwise, there's nothing as a recourse to...

Ms. Esaki: Except for the incoming log that I'm reading about in this memorandum, yeah.

Committee Chair Yukimura: Well, but it still doesn't tell you what the disposition is of it.

Ms. Esaki: Right, right, right.

Committee Chair Yukimura: I mean I'm discussing this because it is an issue for the public. It's like the issue of something never getting on the agenda and the internal ability to challenge the decision of the chair. If a majority of the councilmembers would like it to go another way, we can actually do that in Robert's Rules and in our rules, except that there's no decision delineated.

Ms. Esaki: So what you're proposing is the council chair provides a memo to all the councilmembers at the end of each month?

Ms. Nakamura: Or whenever you get a petition. It doesn't have to be a monthly thing or just be when it's received.

Committee Chair Yukimura: Yeah.

Ms. Esaki: Or to circulate the petition amongst all the councilmembers.



Committee Chair Yukimura: You could go that far too. I mean we could make the rules say that so people would know the substance of the petition. Now it is true that if...okay, so...yeah, I mean the chair could...no, he doesn't have to circulate it. He could send a memo to councilmembers that this has been received. Because it is public record, it will be recorded and if any councilmember wants to see it, they can ask to see it. But he should also tell us what his decision is in terms of what he's going to do with it. I am referring it to the planning committee or to the economic development committee or I have decided that this is not something that's worthy of the agenda and I am choosing to file it or whatever. And these are my reasons; I mean he can even say that.

Ms. Nakamura: So if you just left Peter Morimoto's language there, the petition shall be disposed of by the chair including its referral to the proper agenda if deemed appropriate and shall notify councilmembers of such actions.

Committee Chair Yukimura: Yeah, that sounds good. Okay, so (inaudible). And the council shall be notified in writing of such actions?

Ms. Nakamura: Yes.

Mr. Morimoto: Excuse me; the...maybe the better course would be to just have the councilmembers notified that the petition's been received. If the chair, let's say for whatever reason decides not to place it on the agenda, that could be a serial communication in violation of the Sunshine Law.

Committee Chair Yukimura: Why? It's the chair's action. It's his action and he's just letting everybody know what he's done.

Mr. Morimoto: But he's taking an action which may indicate what his position is on the matter. If it comes back to the council for whatever reason, you know what I mean? I mean I could see the chair saying I received this matter, I received this petition, it's not my intent to place it on the agenda at this time or whatever. But the communication...well the communication from the chair has to...cannot indicate why his or her position would be.

Committee Chair Yukimura: He can tell us what his action is on it though.

Mr. Morimoto: Right.

Committee Chair Yukimura: Because he as the chair is going to have...he has the...it's his responsibility to take care of the agenda. So he has to let us know what he did.

Mr. Morimoto: Right.

Committee Chair Yukimura: That's not telling us his position. He's just telling us what he did. And there's no other way without him telling us what he did to challenge a decision of the chair if the council wants to. If the council wants to, then the councilmember will put it on the agenda and say, I would like to challenge the decision of the chair and I'd like this matter on the agenda.

Ms. Esaki: Well, if the petition comes in and if it's circulated among the councilmembers and if they don't see it coming up on the agenda, then the councilmember who receives it and would like to put it on the agenda can request it of the chairman. So the easiest thing is to have the petition circulate

amongst all the councilmembers as soon as it's received. Then you don't have to worry about the discussion among councilmembers and violation of Sunshine Law.

Committee Chair Yukimura: Well, the thing is if that's the rule, then the public will pressure every councilmember to put it on the agenda and it's better to have the chair make the decision and if the councilmembers support that decision, then it ends there rather than people just putting it on the...

Ms. Esaki: Then the language as written would be the best language, if deemed appropriate. So if the chair determines that it's something that the council should entertain, he'll put it on. But if something like what Peter Morimoto said, it's dealing with sovereignty, the county does not have any jurisdiction over, he'll just say no, not putting it on. So we just have to leave it to the chair's discretion as to whether he feels it's appropriate or not.

Committee Chair Yukimura: That's correct, but he has to announce when he exercises his discretion because otherwise he can say, well...I mean it can go for months and he hasn't disposed of it clearly, decided what to do with it.

Ms. Esaki: Or is it best that it's noted on the log so that every councilmember can check the log to see what the disposition was, so that there's no serial communication, it's just noted on the log, will not be on the agenda or will be referred to X committee.

Committee Chair Yukimura: So then there's going to be a communication that a petition has come in and the chair is going to...

Ms. Esaki: I thought that whenever something comes into the county council it goes into this clipboard where everybody can look at it in the kitchen or wherever it is, conference room, and everybody initials off that they have read it, so that's where your petitions would be held. And you will then be able to determine when did it come in, how long...if it's a long time, you know it's been disposed of in some way and there probably will be a log book that will note that it has not...(inaudible).

Committee Chair Yukimura: That's crazy. Why can't the chair just send a memo saying he's done that?

Ms. Esaki: Well then we'd have to, I think, research the serial communication on that.

Ms. Nakamura: Okay, let them do the research then and see.

Committee Chair Yukimura: Okay. It's just that the serial communication law is so ridiculous.

Ms. Esaki: I know it is and then maybe we should lobby the legislature to change that.

Committee Chair Yukimura: I am going to submit amendments for next year.

Ms. Esaki: But in the meantime...

Committee Chair Yukimura: Because...I mean...efficient operations...

Ms. Nakamura: For now so that we can move it along, can we just put "and shall notify councilmembers of receipt of petition and/or notification of disposition" until we get that clarification regarding serial communications.

Committee Chair Yukimura: And that's fine with me, "and shall notify the council"...try that again?

Ms. Nakamura: And shall notify councilmembers of receipt of the petition and/or disposition or referral.

Committee Chair Yukimura: Well disposition would be referral.

Ms. Nakamura: Okay, I'm not sure about definitions here so. And that's a follow-up.

Committee Chair Yukimura: So, we're eliminating the second sentence then here and just saying, petition shall be in writing with at least name of petitioner signed and printed, and then the chair shall notify councilmembers of receipt and/or disposition.

Ms. Nakamura: I was going to keep Peter Morimoto's language there and then add to that.

Committee Chair Yukimura: Okay, the petition shall be disposed of by the chair if deemed appropriate and...

Ms. Nakamura: And the chair shall notify.

Committee Chair Yukimura: Okay and the chair shall notify?

Ms. Nakamura: Councilmembers of receipt...something along those lines.

Committee Chair Yukimura: Okay, very good, thank you. Any more discussion or concerns there? Okay, if not, then we're on top of page 16, placement on the agenda. Councilmember Kawakami.

Mr. Kawakami: Oh yeah, I'd be opposed to this. This language that provided that any bills or resolutions should be placed on the agenda within 90 days of the date. I think this was an issue in prior council, but this hasn't been an issue here. And I can just forecast some serious problems if each of us walk up one day and say that hey, I got four bills I'd like you to consider. Here's my written request and now by rule by 90 days he needs to put these items on. I think the chair should be given the latitude to operate. He's been doing a good job and I have every confidence that he'll be placing our agenda items in a timely manner. So I'd be opposed to putting such a tightly worded rule considering that we've seen some great progressive kind of actions from our current chair.

Committee Chair Yukimura: Okay. Councilmember Nakamura.

Ms. Nakamura: Yeah, you know with the current chair, again, I don't have the concern because I think if we feel that there is a problem we could always amend the rules. I think originally the recommendation was 120 days and

we looked at 90 days as a worst case scenario during a budget session, but you never know, like the agenda could pile high at times and so with the current leadership, I'm...I know this was an issue from the last council.

Committee Chair Yukimura: There was even a...in the evolution of this a proposal for two meetings...that it be on within two meetings or three meetings or 30 days and we realized that really wouldn't give the chair enough discretion, but that this 90 days actually balances the need for the chair to have some discretion in controlling the timing and the amount of business we have on each agenda. But that there was this possibility of abuse and I guess I think that rules are written not just for current circumstances or for good people. But it's really written for good process, which takes into account potential for abuse and tries to limit that. So I think the 90 days is a good compromise because it allows for a lot of discretion for the chair, but it also limits that discretion and prevents abuse of that discretion by having some assurance that the matter will be on the agenda within a specific time. And I don't think that we'll find too many councilmembers coming up with four bills all at once knowing how long it takes to prepare good bills that are addressing real problems. And so you know...and even if a councilmember comes with four bills, you still have 90 days to kind of spread it out and that's just putting it on the agenda. After that there's public hearings, there's research, there's deferrals, there's even killing the bill. So, you know, I think it puts a good balance.

Ms. Nakamura: We got two extremes here, so.

Mr. Kawakami: No, I'm just...I'm not going to support it, so whichever...which way the votes goes (inaudible) taken any, I'm a no on that one.

Ms. Nakamura: Okay. --

Committee Chair Yukimura: Okay. So I guess Councilmember Nakamura, where do you stand because I guess I'm for it.

Ms. Nakamura: Okay, I'm going to try and find the compromise position, which is to increase the days.

Committee Chair Yukimura: Okay.

Ms. Nakamura: Back up to the 120 days.

Committee Chair Yukimura: Okay, so you'd like to go to 120, okay, which is half a year.

Ms. Nakamura: Yeah.

Committee Chair Yukimura: Okay, all right, that's what it's going to be, okay. Any more discussion on Rule 10? Okay, if not, Rule 11, any concerns?

Mr. Kawakami: Yeah, concern. I don't think we should limit how much certificates are presented because I'll give you one example. Every year the senior citizens, they have this volunteerism kind of convention and they come in with five or six, and so the council chair will present it all in one day, so. I mean we don't really don't run into that big of an issue with certificates and again that's the chair has been scheduling them, yeah, and the staff kind of works with the chair in saying, you know, we got two certificates, you know, we'll move Derek's one to next

week, and so it works out on its own. I don't think we've been flooded with certificates.

Ms. Nakamura: That's fine.

Mr. Kawakami: Yeah, to me just take it out.

Ms. Nakamura: Do you want to include the language about the chair approving it on a first-come first served basis?

Mr. Kawakami: I think that's how he's handling it already as it is, yeah.

Ms. Nakamura: Yeah?

Mr. Kawakami: Yeah.

Committee Chair Yukimura: Well, if you're not going to limit it, it doesn't matter.

Ms. Nakamura: Okay, okay, all right.

Committee Chair Yukimura: I have seen the issue where and it's especially during campaign times, but you have certificates that take up maybe two hours of a council meeting, you know.

Mr. Kawakami: I've never seen that yet, but if you had to sit through that, I'd be all for this rule, but...

Committee Chair Yukimura: Okay, I...we can play it by ear and see how it works. I think the chair has really been managing very consciously, so and it's not an election year, so. Okay, so let's take that out, okay.

(c) Public hearings.

Ms. Nakamura: Page 17, (d) the location of the public hearing, that second paragraph allows...it talks about a petition by 50 people requesting to change the location of the public hearing and you can do it within 24 hours, the day before the meeting.

Committee Chair Yukimura: Yeah, we talked about this, yeah?

Ms. Nakamura: I thought...so either...I think we should...I'm not sure if this is consistent with the Sunshine Law.

Committee Chair Yukimura: It's not.

Ms. Nakamura: And if so, we should either remove it or we should change it to seven to eight working days. Since we have to publish the notice six days before...

Committee Chair Yukimura: I think for public hearings we have 20 days.

Ms. Nakamura: Twenty days? Is this regarding public hearings? Okay.

Committee Chair Yukimura: Something longer. I don't know if it varies with planning public hearings and appropriation public hearings. I mean...I think we should just take it out. Jade, can you take the mike? I don't know that this has been an issue. Go ahead, I'm sorry.

Ms. Tanigawa: No, you're correct. Money bills, publications for different types of bills run longer. You know our notification to the newspaper, to the *Garden Island*, money bills 20 days, planning bills depending whether it's LUC and SLUD bills (inaudible) 20 days. So it is...it can range from 10 to 20 to sometimes longer.

Ms. Nakamura: Yeah and I just think it's just not good to change the location of the public hearing one day in advance without being able to notify. So why don't we just...my recommendation is to remove it.

Committee Chair Yukimura: Yeah, I think we remove that whole paragraph. To my recent recollection, there haven't been any problems with it and if we anticipate a really major bill, oftentimes councilmembers will say maybe we should have it at another location or it will come up during the setting of the public hearing. So why don't we just eliminate that paragraph.

Ms. Nakamura: Okay.

Mr. Kawakami: Okay.

Committee Chair Yukimura: Thank you.

Ms. Nakamura: Then on page 18 at the very bottom, the additional language. The last sentence there, the councilmembers shall promptly forward the written communication, can we just put "to the county clerk." because it talks about the office of council services. Page 18 (e).

Mr. Kawakami: You know I get one problem with (e) as it's written even. If I could kind of go over what my concerns are.

(?): Sure.

Mr. Kawakami: Do we know who submitted this? Whose proposal is this?

Ms. Nakamura: I think we took it out of...I think I might have mentioned it because it came out of one of the other islands.

Mr. Kawakami: Okay.

Committee Chair Yukimura: Yeah.

Mr. Kawakami: Well, one of the problems I have is that we get a lot of testimony the day of. So to discredit testimony coming the day of because some people they just find out about it through word of mouth like hey man, this thing is happening. So they'll rush out and they'll...and I would hate to discredit that.

But the second thing that hits me is that the way this is written, if a constituent of mine or ours feels comfortable just addressing me and says, hey Derek, I'm against this bill and this is why. Now I have to violate his...if he wanted to keep it private between him and I, I need to now send it out as public record, the way I'm reading it.

Committee Chair Yukimura: Let's just take it out.

Mr. Kawakami: Yeah. You know what I mean, yeah, though.

(?): Yeah.

Committee Chair Yukimura: I think it does create more problems than it solves.

Mr. Morimoto: (Inaudible.)

Committee Chair Yukimura: Just remove the addition. Okay. Rule No. 14. It just adds a consent calendar and the proceedings about the consent calendar is addressed in Rule 15, and let's look at Rule 15 so we see how it all works. Rule 15(c).

Mr. Kawakami: Or before that, (b), once again I'd be opposed to that 90 days, you know the communications so and I know you guys just amended...

Committee Chair Yukimura: Where is that?

Mr. Kawakami: Rule 15(b), at the bottom.

Committee Chair Yukimura: Oh, okay, we aren't there yet.

Mr. Kawakami: It kind of mirrors the resolutions and bills, and then a sort of compromise was the 120 days.

Committee Chair Yukimura: I think you're talking...

Mr. Kawakami: Am I on the right thing?

Committee Chair Yukimura: No...you are.

Ms. Nakamura: Okay, you're on 15, you're on 14, right? You're on 14, yeah?

Committee Chair Yukimura: Well 14 is just adding the consent calendar, but 15(c) tells how the consent calendar would work.

Mr. Kawakami: Okay.

Committee Chair Yukimura: So that's what I was looking at right now.

Mr. Kawakami: Oh, okay and I thought we were jumping over the (b)'s.

Committee Chair Yukimura: Yeah, yeah, no, we'll come back to that.

Mr. Kawakami: Okay.

Committee Chair Yukimura: Okay, so 15(c) says, the council or committee may place on the agenda a consent calendar of items that may be approved without presentations, clarifying questions, or debate. All items on the consent calendar may be approved by a single motion. Upon request by a member, an item on the consent calendar shall be discussed individually. Actually what that means is it's going to be pulled from the consent calendar, right, and placed as an ordinary item.

Mr. Morimoto: I avoided language about pulling it from the consent calendar because I didn't want to get into amending the agenda because the agenda can't be amended. And so...

Committee Chair Yukimura: Well, the item can be moved from one part of the agenda to another part.

Mr. Morimoto: Yeah, anyway, I didn't want to get into any kind of discussion about amending the agenda, so instead of saying removed from the consent calendar and placed on the regular agenda.

Committee Chair Yukimura: But that would defeat the purpose of the consent calendar because you'd hold up the whole consent calendar to discuss an item. I mean the whole idea was you would dispose of it and then go to the items that need discussion.

Mr. Morimoto: Right, but if a member wants to discuss an item individually, he can request that it be discussed individually instead as part of the consent calendar.

Committee Chair Yukimura: That's correct and I'm trying to figure out the mechanics for discussing it individually. My visualization was you pull it from the consent calendar, you put it as an ordinary agenda item, and you discuss it and you move on the consent calendar and do that up front quickly. But you pull the items from the consent calendar that you don't want to be perfunctorily disposed of.

Mr. Morimoto: That would mean amending the agenda, right?

Committee Chair Yukimura: Well, you're moving...like we move things to the end of the agenda or to the middle of the agenda or to after lunch break or whatever to allow an administration member to come or whatever. I mean you can do that as long as it's on the agenda. You can move its placement on the agenda. I thought that was the whole purpose of a consent calendar.

Mr. Morimoto: That is the purpose of a consent calendar.

Committee Chair Yukimura: So I'm trying to figure out how the mechanics work.

Ms. Nakamura: So is it after the consent calendar is...when it's on the agenda, at that point do members have a choice then to say...

Committee Chair Yukimura: You have to pull it before you act on the consent.

Ms. Nakamura: Before the act.



Committee Chair Yukimura: Yeah.

Ms. Nakamura: So...

Committee Chair Yukimura: You withdraw from the consent calendar is my understanding. I've never...

Ms. Nakamura: Does that work with the Sunshine Law?

Committee Chair Yukimura: Yeah because it's all on the agenda. You're just moving it's placement on the agenda. Right, Amy?

Ms. Nakamura: That's why I wanted to ask.

Committee Chair Yukimura: Is there a problem?

Ms. Esaki: (Inaudible.)

Committee Chair Yukimura: Okay, so we're talking about consent calendar. And is there a problem with taking something from the consent calendar, an item, and putting it back into the regular calendar on the agenda? I don't see what Sunshine problem that is.

Mr. Morimoto: I don't know. I just...I recall that there's language that says an agenda cannot be amended. You know once it's posted, it's...

Committee Chair Yukimura: Well, it can't be amended with additions.

Mr. Morimoto: And so I can see when you're saying that you're moving something to the end of the calendar...

Committee Chair Yukimura: Yeah, you're just moving its location on the agenda. You're not adding something new that wasn't on the agenda. Amy, is there a problem?

Ms. Esaki: I don't know what this consent calendar is about. I've never heard of it before. I don't think I've ever come across one. I was looking with...

Committee Chair Yukimura: There's a lot of jurisdictions. According to Peter it's all over the country.

Ms. Esaki: I beg your pardon. It's all over the country?

Committee Chair Yukimura: Yeah, I don't know. Santa Barbara might have.

Ms. Esaki: I don't know if we ever used it before, but...

Committee Chair Yukimura: Well the question is not...this is a decision for the council to make whether to use a consent calendar or not. The question is whether in the way that we understand a consent calendar to work and forgive me for being a little fast in how I'm talking, but I'm trying to make our timetable, yeah, so that the consent calendar is acted on as one entity. There's all these things that

theoretically don't have any debate about it or discussion and it's written in Rule 15(c), right?

Ms. Esaki: Yeah.

Committee Chair Yukimura: So it would be approved without presentations, clarifying questions or debate.

Ms. Esaki: Okay.

Committee Chair Yukimura: So it would be one action instead of the clerk reading every item and then we act on it and we sometimes do items blah, blah-blah, blah-blah, we just approve, defer, right.

Ms. Esaki: Yeah, we just act on the whole page when it's up for receipt or whatever.

Committee Chair Yukimura: Yeah, yeah. So rather than even going by numbers, we just say consent calendar. If people want to take...discuss something, they would move to remove something from the consent calendar and put it into the regular agenda, and then they would move the whole consent calendar and approve it. So, Peter's concern about...he says we can't amend the agenda, but I'm saying it's just moving something to another place on the agenda. So is there a problem with that?

Mr. Kawakami: I think you can amend the agenda with a two-thirds vote as long as it's not of reasonable importance that it will affect a significant amount of people or something like that.

Committee Chair Yukimura: Yeah, but in this case we're not adding anything new. We're just moving it to another place in the agenda. I don't understand how that could violate the Sunshine Law. Everybody is noticed that it's going to be on the agenda.

Ms. Esaki: And everybody knows what's on the consent calendar.

Committee Chair Yukimura: Yes.

Mr. Kawakami: Just put it on and then we'll cross that bridge when we cross it.

Committee Chair Yukimura: Well, you guys gotta give us a legal opinion. I think it's pretty simple, but I'm not the advising attorney here.

Ms. Esaki: Well, if I can just have time to talk to Peter because again this is time for me so...

Committee Chair Yukimura: Okay, go for it. Okay, let's defer this and let's go to...okay, why don't you guys talk right now and let's go to the...well, let's see. Let's go...I want them to listen in on our conversation, so let's go to the easier...are there any more easier ones?

Mr. Kawakami: Okay, the easier one is Rule 15(b) and that's the one where you guys changed the last time from 90 to 120.

Committee Chair Yukimura: Yeah, so we just move that to 120 also, okay.

Mr. Kawakami: Yeah, but then just as a note on this thing I'm going to oppose it, any kind of date that we put on this (inaudible).

Committee Chair Yukimura: Right, okay.

Mr. Kawakami: That's fine.

Ms. Nakamura: You know, I really wanted to also add the language that...the intent here was to give the chair discretion to schedule items to manage the business of the council's agenda and I want...I think that was the whole intent.

Committee Chair Yukimura: Right.

Ms. Nakamura: And we feel comfortable with Jay's leadership to do that and this was just...for me it's a compromise situation, but I would be comfortable to add that language in front of rather than starting it off with that he has to initial everything on the agenda. We can keep that in there, but to include the overall intent which was...would it be okay to add that language? The chair shall have the discretion to schedule items to manage the business of the council's agenda.

Committee Chair Yukimura: That's good as the first sentence in 15(b).

Ms. Nakamura: And the last, the 120 days is just sort of the in case you don't have a chair that...

Committee Chair Yukimura: It's a limit and it's a protection against abuse of the discretion, which we all agree he should have. But if it's abused, then it's not working well. So the chair shall have...what was your wording?

Ms. Nakamura: The discretion to schedule items to manage the business of the council's agenda. You can do it in any way you want, but to get across that.

Committee Chair Yukimura: Yeah, that's good; you got that language then, Peter? You okay? You're okay with that language? All right, good. Okay and it's to be noted that Councilmember Kawakami is opposed to this. Okay and we're going to have to think through for the meeting. We'll file a committee report with that...with your...the places that you disagree with, okay? All right.

Communications with the county attorney, that's a gnarly one. Let's see, can we just go to Rule 18? Are we okay with Rule 18? Just finish and then come back with the last gnarly one.

Mr. Kawakami: Okay, Rule 18 is just a recusal requirement, yeah? I mean it just requires that you recuse yourself from...

Committee Chair Yukimura: You know it's actually a...

Ms. Nakamura: Anti-nepotism.

Committee Chair Yukimura: It's a human resources policy is basically what it is. It's about hiring.

Mr. Kawakami: Okay.

Committee Chair Yukimura: For appointment, employment, promotion and advancement.

Mr. Kawakami: But let me raise a question.

Committee Chair Yukimura: Okay, go ahead.

Mr. Kawakami: Well, let me make sure that I'm understanding this so if somebody wants to explain it, what this exactly does. The way I'm reading it is that the person that's related to this, I guess, what is this?

Committee Chair Yukimura: To the person being appointed, employed, promoted or advanced.

Mr. Kawakami: Yeah, would just not be able to be in the discussion or the selection or the voting process. It doesn't eliminate that person from being considered for the job, right?

Committee Chair Yukimura: No.

Mr. Kawakami: Okay.

Committee Chair Yukimura: I don't think so (inaudible).

Ms. Nakamura: That's correct.

Mr. Kawakami: It's just that a...it makes it really clear that if you're related to the person through marriage or through blood and it has the definitions that you have to recuse yourself.

Ms. Nakamura: This is to avoid the situation that I was in, where there actually there was no rule preventing me from voting.

Mr. Kawakami: Oh yeah.

Ms. Nakamura: So people wanted to force me to vote on a matter that I thought was inappropriate.

Mr. Kawakami: Yeah.

Ms. Nakamura: So this is the nepotism policy so that any future public official would not have to have that uncertainty.

Mr. Kawakami: I agree because if I was in the same shoes as you, I wouldn't...that would not be appropriate.

Ms. Nakamura: But by law I was supposed to have.

Mr. Kawakami: Oh really?

Ms. Nakamura: By our rules, by the county's rules, so this is a first step and I really want to...I want this to be a first step and to make it a county-wide policy.

Mr. Kawakami: And this just takes care of the legislative branch.

Ms. Nakamura: Just our in-house.

Mr. Kawakami: Okay, that's fine.

Committee Chair Yukimura: Okay?

Ms. Nakamura: We did find one typo. Peter Morimoto found it on page...Rule 18(b) just from city it will be county because we pretty much lifted this from City and County of Honolulu.

Committee Chair Yukimura: Okay, actually it's corrected in the latest version.

Ms. Nakamura: Okay, good.

Committee Chair Yukimura: Yeah, all right.

Ms. Esaki: Can I ask a question since I'm reading it for the first time?

Committee Chair Yukimura: Yes, please do.

Ms. Esaki: Does that mean then that it's not just the voting but the hiring. This is saying nobody who's related can be hired. So does that go prospectively and not retroactively? How does this work? If you have people in here who are related, does that impact them that they can no longer be hired?

Ms. Nakamura: No, it's prospective.

Ms. Esaki: Prospective. So the current people who may be related, this rule would not apply to them?

Committee Chair Yukimura: Well, it's not a question of whether they can be hired, it's the person hiring or participating in the ruling about their position and their pay and so forth, not being able to be part of the decision making is how I read it. Are you reading it in a different way because maybe we've overlooked the wording? It says a public officer may not appoint, employ, promote, advance or advocate for appointment, employment, promotion, or advancement someone who is a domestic partner or a relative or a relative of a domestic partner.

Ms. Esaki: So is that only the council chair or...the way I read it...

Ms. Nakamura: The way the...public officer is defined as council, the council, the county clerk and the county auditor under section (e).

Ms. Esaki: The public officer, right?

Ms. Nakamura: Yeah.

Ms. Esaki: The public officer who can hire, promote, advance, etc.

Ms. Nakamura: Yeah, so it only applies to the council, the county clerk and the county auditor.

Ms. Esaki: But it also...I mean they are the hiring body. I mean the person who hires. So it's everybody within this office who would not...could not be related. I mean you can't be related if you want to be hired in this office going forward.

Committee Chair Yukimura: No, that's not right. It means that in the decision making of hiring, the councilmember cannot participate in the decision making or the clerk or...if it's a relative. Pardon me?

Mr. Kawakami: So the county clerk cannot appoint relatives.

Ms. Nakamura: His mom.

Committee Chair Yukimura: Right.

Mr. Kawakami: Or the auditor cannot appoint relatives.

Committee Chair Yukimura: Right.

Mr. Kawakami: Or anybody defined.

Committee Chair Yukimura: Right.

Mr. Kawakami: And for the council, all it means is that the one out of six, whoever's related gotta just step back and you know.

Committee Chair Yukimura: And cannot go tell the county clerk to hire somebody that's their relative.

Mr. Kawakami: Yeah.

Committee Chair Yukimura: Okay? Any more questions or concerns? Okay, if not, that's in. Travel policy, any questions?

Mr. Kawakami: Yeah.

Committee Chair Yukimura: Okay.

Mr. Kawakami: I'm opposed to the travel report just because and I know we've done travel reports before and I think it should be the prerogative of the individual that's traveling to do a report. But to be honest, I've done reports and nobody's looked at it. And...but there's been many times when people come up to me and say, hey you know, what happened on the trip and I can provide a report on that or just informally discuss what happened, but for me, as being probably the most traveled councilmember, it's going to be burdensome, especially for every conference I gotta attend, every HSAC meeting too, and every time I gotta travel to the leg (*legislature*) to go testify on a bill or to go and lobby for something for the county becomes almost like overkill. So this one I would just...the travel report

side, I would recommend we take out. But it's good to do it, but it should be individual choice.

Ms. Nakamura: And I'm fine with that. I think it could be the prerogative of each councilmember if he or she chooses to write one and distribute to the other councilmembers. I'm okay with that.

Committee Chair Yukimura: Okay.

Ms. Nakamura: So we can just delete it.

Committee Chair Yukimura: The whole Rule 19, everything. Okay, out. All right, so then we're back to Rule 17 and I think we're almost done.

Ms. Nakamura: I'm good.

Committee Chair Yukimura: You're good with this rule?

Ms. Nakamura: Oh no, with the time.

Committee Chair Yukimura: Oh, okay, all right. So we kind of looked at it. Now let's see. So this is an issue that tries to distinguish between county attorney opinions that are made on a subject matter that is being discussed by the council and the anticipation is that there would be action on it and a matter that's just been inquired about before the issue gets to the council. And I don't know that it's that easy to draw the line, but that's the proposal here with the idea that any county attorney's ruling on a matter that the council is considering should get to every councilmember because I mean I do think in terms of process that if you want good decision making, you want this common body of information that everybody has. You know, that's kind of the principle behind it. Everybody has the same information, whether it's data or legal opinions or whatever. And maybe Councilmember Kawakami, you have some examples of things that might be really personal that are not...that are related to a subject matter of the council that is related to privacy? I know you mentioned that. Some examples maybe would help.

Mr. Kawakami: Not so much an example, but I'll give you an example of say, like we send over a communication and I think I got a county attorney opinion on the sunshine market and so I'm reviewing it and what I'm going to do after I review it is I'm going to go ahead and tell the staff to please circulate this to all councilmembers. And that's a personal decision that I'm making and that's the way I've handled county attorney opinions in the past. And to me, to put this as a requirement...at some point in time, people have to make decisions and I think it'd be in everybody's best interest to do what you're proposing, but there's going to be times when I guess it infringes on people's attorney-client privilege. I mean if I'm making a personal request, I would hope that that would remain confidential and not now put it in the hands of five other members to decide whether they're going to basically expose this confidential communication I'm having with our attorney because that's what it does, you know. It circumvents that privacy that I think we all should be afforded and puts it in the hands of a supermajority to say, we don't care whether you want this confidential or not. A supermajority has decided that we're going to make this...I guess circulated amongst the rest of your colleagues. It defeats the purpose of having confidential attorney-client communication.

Committee Chair Yukimura: Well, so I can see when the attorney-client information is about a councilmember's specific action or liability, but if it's about a matter that everybody should know about, I mean it's not a private matter, it's about sunshine markets or it's about ag lands or it's about appropriations or whatever, I'm not clear how that should be restricted. I mean I can see that the councilmember would first get it back since the councilmember initiated the question, but it seems to me if it's a question of law on a subject matter that the council will act on, it should be made available to everybody and actually a councilmember shouldn't have the right to withhold it. Now I suppose if they know of the existence of the county attorney's opinion, they can ask for it.

Ms. Nakamura: Request it, yeah.

Committee Chair Yukimura: But if they don't, it's still information that they should have. I mean because it's...I mean we're talking about collaborative decision making and being generous with the information because it's common information.

Mr. Kawakami: You know in a perfect world I would buy into that scenario, but I've seen in the past that people have held back information strategically to position themselves in the spirit of debate and that's the nature of our job. It's to be able to debate issues and if you are telling me that every single attorney-client communication that has come through you has been circulated amongst all councilmembers, then I'd be happy to say that hey, this is a good thing. But I know for a fact that this is not what's practiced, even amongst people that are advocating for this.

Committee Chair Yukimura: You know...

Mr. Kawakami: So it becomes an issue like hey, practice what you preach and if you're doing this, hey, but it's not the way it's being handled.

Committee Chair Yukimura: Well so that's exactly what this would prevent, people withholding information and I don't like it strategically withheld because it's the day before the vote...the day of the vote and people get this opinion, and it's used strategically and people don't have time to digest it or understand it, then it's...it...I used to actually hate that and it didn't always have to be legal opinions. It was just even information or positions just given at the last minute and sometimes it really had a lot of holes in it, but you didn't have time to really digest it and so then it was just...you know the vote was taken without really analyzing the information that was presented at the last minute. It was not good decision making.

Mr. Kawakami: But nonetheless, my position on this is opposed to it and whichever way the committee decides to move on it, I'll support the voice of the majority. So I'm opposed to it.

Committee Chair Yukimura: Okay.

Mr. Kawakami: And I will be opposing this if it should make it to the committee of the whole.

Committee Chair Yukimura: Okay, all right. Well I mean I...



Ms. Nakamura: So basically right now the way things occur is that an individual councilmember can request a privileged opinion, an opinion from the county attorneys and that can be just confidential between the county attorney and that requesting councilmember. That's one piece of it.

Then the second piece is that it's really up to the discretion of that councilmember when that opinion is released to others.

Committee Chair Yukimura: Councilmembers, not to the public.

Ms. Nakamura: Okay, to other councilmembers. And so what you're basically saying is that it should be really discretionary on the part of the councilmember when that opinion is released. Is that what I'm hearing from you?

Mr. Kawakami: Yes.

Committee Chair Yukimura: When or whether?

Mr. Kawakami: Yeah and even if it is released or not.

Ms. Nakamura: Okay, it should be...so that the discretion of the requesting councilmember whether and when to release.

Mr. Kawakami: So if you were thinking about what language we could insert to get me to vote yes, I would say the deletion of the whole Rule 17 would satisfy my...

Ms. Nakamura: Because that's...okay and you just go back to how things occur now.

Mr. Kawakami: Yeah.

Ms. Nakamura: I see.

Mr. Kawakami: I mean and that's just my opinion on it. I don't think there's a right or wrong answer in this. It's just varying shades of gray, but for me I'm opposed to it.

Ms. Nakamura: Okay.

Mr. Kawakami: You know because there is nothing to stop you from doing your homework and asking the county attorney the very same questions that I'll be asking.

Ms. Nakamura: And if the county attorney has done an opinion, he will probably tell you or give you a copy if it's the same question. Is that correct?

Committee Chair Yukimura: Amy?

Ms. Esaki: They might answer the question directly to the councilmember again.

Committee Chair Yukimura: What do you mean? You mean they're going to ask permission of the councilmember to release it to another councilmember?

Ms. Esaki: No, it will be written like a new memorandum, new opinion.

(?): Oh, oh, I see.

Mr. Kawakami: Say for example if I sent a letter to the county attorney asking her if Bill 1111 is legal and it's a confidential communication. I don't think that's anything to stop Nadine from writing that same as this and by law I think the county attorney has to advise her even though we're asking the same questions. You know there's nothing to stop me from saying oh, because I'm asking this question, if anybody else asks the question you cannot answer. No, that's...it just comes down to hey, how diligent are you going to be in asking the questions and the right questions and to sit down and you know...

Ms. Nakamura: That's fine because I'm thinking if I'm asking the county attorney for an opinion on a bill that I'm working on and I get the opinion back, then I'm probably going to want to share if it's going to help to shape the legislation, I'm going to share it with the councilmembers to help advance my case. So I...for me, that's what I would be doing.

Committee Chair Yukimura: Well, but if it's an opinion that's what you want to do is not legal, would you share it?

Ms. Nakamura: I would not pursue that option. I would be amending the bill.

Mr. Kawakami: Exactly.

Committee Chair Yukimura: Okay. So yeah, it's about...so what is the objection to having that information available to everyone?

Mr. Kawakami: I'm not objecting to it. I'm objecting to you requiring it.

Committee Chair Yukimura: Well, but that's what I'm saying.

Ms. Nakamura: Yeah, I think it should be...I think I agree with Derek that it really should be up to the discretion of the councilmember.

Committee Chair Yukimura: Okay.

Ms. Nakamura: Because I think it's...it could be just formative information. It could be like you know, just information that...

Committee Chair Yukimura: That's why it says that...that's what the first sentence is. If it's in the formation of a bill that hasn't yet been introduced, then it is...

Ms. Nakamura: Privileged, right.

Committee Chair Yukimura: It's privileged between the councilmember. But once it gets on the agenda, then it should be available to everybody because they're all going to be involved in the decision making and it's about sharing information. That's the distinction that's made here.

Ms. Nakamura: And if I'm reviewing...as a councilmember if I see an issue, I'm going to ask the county attorney for an opinion.

Committee Chair Yukimura: But that's where we help each other because not everybody identifies all the issues and it's helpful when somebody else identifies the issue and you know because we don't see everything right away. It's that synergy of different perspectives and different people asking the question that you may not have thought of to ask, but it's useful information for you to have when you're making a decision.

Ms. Nakamura: I guess I feel like...

Committee Chair Yukimura: You'd rather not have any rule about it.

Ms. Nakamura: Either that or I would just change the second half of that. I mean the first half I think everybody is agreeing is what happens now. So the first part is okay. The second half I would just put it shall be up to the discretion of the requesting councilmember to determine whether and when to release the opinion to other councilmembers.

Committee Chair Yukimura: Okay. Is that okay with you?

Mr. Kawakami: Yeah.

Committee Chair Yukimura: Okay. That's not my opinion, but since both of you, then let's put forth that language.

Ms. Nakamura: And we can see where it goes.

Committee Chair Yukimura: Right, okay. So if the subject matter of the opinion and request has been placed on the council agenda, it shall be in the discretion of the councilmember ...of the requestor of the opinion.

Ms. Nakamura: Yeah.

Committee Chair Yukimura: As to whether to release the opinion.

Ms. Nakamura: Whether and when.

Committee Chair Yukimura: Where and when to release the information...release the opinion.

Ms. Nakamura: To other councilmembers.

Committee Chair Yukimura: Yeah, all right, okay. Is there any other...

Mr. Morimoto: (Inaudible.)

Committee Chair Yukimura: Yes.

Mr. Morimoto: So the second sentence would read, "the subject matter of the opinion (inaudible) the request has been placed on a council agenda that the request for the opinion and the opinion received pursuant to that request may be circulated to other councilmembers at the discretion of the requesting councilmember."

Committee Chair Yukimura: Okay, that's fine and actually it should be if the subject matter of the opinion...the request won't be placed on the council agenda, right? So it's the subject matter of the opinion has been placed on the agenda.

Mr. Morimoto: Subject matter...what I intended (inaudible). Subject matter refers to both...if the subject (inaudible).

Committee Chair Yukimura: Yeah, but they won't...it...the request for what?

Mr. Morimoto: (Inaudible.)

Committee Chair Yukimura: But it may not be put on the agen...request of the requestor?

Mr. Morimoto: Subject matter, not (inaudible).

Committee Chair Yukimura: Right, so that's why I'm saying you can take out "and the request." That you just "if the subject matter of the opinion has been placed on the agenda," that's as distinguished before it's placed on the agenda?

Mr. Morimoto: No. (Inaudible.)

Committee Chair Yukimura: Right, but not the request itself.

Mr. Morimoto: (Inaudible.)

Committee Chair Yukimura: If the subject matter of the opinion has been placed on the agenda as distinguished from before it's placed on the agenda, then you say it may be released, whatever that language is.

Ms. Nakamura: (Inaudible.)

Committee Chair Yukimura: Okay, but we're not done because I have to get clear on the consent agenda. I mean we haven't finished that. You have to write that up and we have to...

Mr. Morimoto: This is from Chapter 92. No board (inaudible) for the purposes of Chapter 92 where the council is a board, shall change the agenda, once filed, by adding items thereto without a two-thirds recorded vote of all members to which the board is entitled; provided that no item shall be added to the agenda if it is of reasonably major importance and action thereon by the board will affect a significant number of persons. Items of reasonably major importance not decided at a scheduled meeting shall be considered only at a meeting continued to a reasonable day and time.

Committee Chair Yukimura: But Peter, that's not relevant because we're not adding any item to the agenda. The agenda is already added, is already there, as I understand it. It's on the consent agenda. So if that applies and prohibits us to take it off the consent agenda and put it somewhere else on agenda, then we can't put things at the end of the agenda or put things at another place in the agenda. That's talking about adding items. We're not adding items. Okay?

Mr. Morimoto: Yeah.

Committee Chair Yukimura: Right? Okay. So I don't think we're prohibited to pull it from the consent agenda and put it on a regular agenda. So if we want to do the consent agenda, then what is the process, what is the wording that we're going to have here? So if there is no desire to have a consent agenda, I guess we can just say that and take it all off. If we do want to put a consent agenda, then how are we going to do it? What are the mechanics for doing it as spoken in the words here or as written in the words?

Ms. Nakamura: Do you want a consent agenda?

Committee Chair Yukimura: It was put on there because it was one of the suggestions made to the rules. I think it could work. I'm trying to figure out...that was Peter's research assignment, how it's going to work so that we can see whether we want it or not.

Mr. Kawakami: I would like to have a consent agenda if it cuts back on our meeting time. Now, how we address people wanting to take things out to address it, maybe we should require that they...because once we get the consent agenda, we're all going to know what's in that agenda, yeah, the minutes, committee meeting reports, and so on and so forth. So if you have a personal...I guess if you want to remove an item, maybe you need to talk to the chair.

Ms. Nakamura: In advance of the meeting.

Mr. Kawakami: In advance, in you know...

Ms. Nakamura: So we should maybe have a rule for that then?

Mr. Kawakami: Pursuant to the Sunshine Law that hey, whatever...

Ms. Nakamura: Or you want to do it on the floor?

Committee Chair Yukimura: Yeah because people don't always get to read the agenda and sometimes a certain item may come up between the time the agenda is posted that makes you understand it's an important agenda that can't just be summarily disposed of. So it's going to be at the meeting where you're going to be able to just pull. You're not going to have any discussion on it. I mean you're just going to pull it because you want to have discussion on it and then because the consent agenda means that we agree we don't even need discussion on it and that's supposed to make it faster. So then we just say, okay, we all agree, but no, this one somebody...if there's even one person who wants it off, we take it off without any discussion or debate and then we discuss it, you know.

Ms. Nakamura: Okay.

Committee Chair Yukimura: That's how I think the consent agenda works.

Ms. Nakamura: So what rule was that now?

Committee Chair Yukimura: 15 and 14. 15(c) is the one that I don't know if it clearly provides the mechanics for doing it. The council or committee may place

on the agenda a consent calendar of items that may be approved without presentation, clarifying questions, or debate. All items on the consent calendar may be approved by a single motion. Upon request of a member, an item on the consent calendar shall be discussed individually. I think that should be, shall be removed from the consent calendar and placed on the regular agenda, or...

Ms. Esaki: Is it going to be identified like how you have currently all your communications?

Committee Chair Yukimura: Yeah.

Ms. Esaki: So when you have like a consent calendar at the top of your agenda, it's going to list all of the communications for such and such, for approval of such and such.

Committee Chair Yukimura: It has to be with enough identification so people know what they're acting on. But it just doesn't have to be read individually and it just is by one motion approved. That is supposedly the way to make things go faster, one motion on things that people have no debate or disagreement.

Ms. Esaki: So you'll say...so when the motion comes to approve, motion to approve items listed on the consent calendar.

Committee Chair Yukimura: Exactly.

Ms. Esaki: And if there's...like the consent calendar has 10 items, maybe number 9 is one that everybody wants discussion and there's a detailed listing of what that is.

Committee Chair Yukimura: Right and not everybody needs to want discussion, just one member it takes to remove it because obviously it's not 100% consent.

Ms. Esaki: So in other words, you're going to have more discussion on number 9.

Committee Chair Yukimura: Right.

Ms. Esaki: But approval of...when you have the discussion of number 9, then the discussion is going to take place with the consent calendar and after that you'll...

Committee Chair Yukimura: No, no, no, it's pulled off the calendar and put on the regular agenda and we do one motion of the consent calendar, all the things that we agree on and we don't need discussion for. But for the items that were pulled, we have a regular discussion.

Ms. Nakamura: Okay, how about putting some language like prior to a motion to approve the consent calendar, the chair shall ask all councilmembers for items that would be removed from the consent calendar or something to that effect so at least there's a process in place that'll flag the items that we do want to discuss in more detail and then move everything forward and then do the motion to approve the consent calendar.

Committee Chair Yukimura: Where did Peter go?

(Inaudible.)

Committee Chair Yukimura: Okay, okay. I would like to be told that.

(Inaudible.)

Committee Chair Yukimura: Okay, we're going, we're leaving. So, Jade, Peter said there were numerous examples on the web of consent calendars. Surely there's someplace with some wording.

Ms. Nakamura: Just prior to a motion to approve, the chair shall ask councilmembers...

Mr. Kawakami: Let me ask you guys this. You know typically, the way I'm seeing this thing happening is 90% of the time the items on the consent calendar we're just going to approve them and on the rare 10% of the time that we have an individual councilmember, can't the chair just say, okay, we're going to handle these items individually then and we'll just...you know what I mean? Instead of pulling things out and then...I mean is that going to address all the concerns or...

Committee Chair Yukimura: I mean whether you call it pulling it out or whatever, it's mainly just so you're not acting in it by a motion...that one motion that approves the consent calendar. So let's...I'll work with Peter on that.

And then I...we just have to check procedurally, you know. We need a motion and a second. The chair's not supposed to make a motion or a second for that meeting. So I'm going to check and see, if not we may have to ask for an extension or reschedule a meeting or something. But if we can, we will act on it with your understanding of what's in here and we'll do a committee report that clearly delineates what you support and what you don't.

Ms. Nakamura: Do we need to meet at this point if we've got agreement about...you know there's some...a few follow-ups, but.

Committee Chair Yukimura: Unless we can do it like the legis...well, then I would say we would move to approve as discussed and subject to review of the specific wording and assuming there's no problems, then I'll draft a committee report that all of us will sign.

Ms. Nakamura: That's fine with me.

Committee Chair Yukimura: Okay.

(Inaudible.)

Committee Chair Yukimura: Right here. We planned...oh yeah, but we were planning a meeting here.

(?): You were planning a meeting here.

Committee Chair Yukimura: Yeah and then it's due...the report is due there on the 10<sup>th</sup>, so we have time to submit. But it won't go on the council f...or we...then it will come here, committee of the whole.

Ms. Nakamura: Yeah.

(Inaudible.)

Committee Chair Yukimura: No, actually...okay, Amy and Ricky and Jade, if we make a motion today to the effect that I just articulated, is that okay?

Mr. Kawakami: Okay, so moved.

Committee Chair Yukimura: All right. There's a motion to approve...

Ms. Nakamura: Second.

Committee Chair Yukimura: Let's get this down clearly, though. To approve as discussed subject to review of the specific language and subject also to the signing of the committee report that will be drafted for signature.

Ms. Nakamura: The sub-committee report?

Committee Chair Yukimura: Sub-committee report. Okay, so moved and seconded. Any discussion? If not, all those in favor say, aye. Do we need a roll call vote? No right? Okay. Approved unanimously. Motion is carried.

Mr. Kawakami moved to approve the recommended rule changes as discussed, subject to review of the specific language, and subject also to the signing of the committee report that will be drafted for signature, seconded by Ms. Nakamura, and unanimously carried.

Committee Chair Yukimura: Thank you very much everybody for your work and I will get that report out to you.

ADJOURNMENT.

There being no objection, the meeting was adjourned at 5:02 p.m.


Respectfully submitted,



WILMA AKIONA  
Council Services Assistant

/wa

APPROVED at the Committee Meeting on May 11, 2011:



JAY FURFARO, Chair  
Committee of the Whole



2-28-2011  
mtg

## RULES OF THE COUNCIL OF THE COUNTY OF KAUAI

### RULE NO. 1 MEETINGS

(a) Recommended Procedure for Initial Convening of the Council.

(1) When the time specified by law arrives for the first convening of the newly elected Council, the Mayor, as the temporary Chair, shall call the Councilmembers-elect to order and shall appoint a temporary clerk.

(2) The Mayor, as the temporary Chair, shall appoint a credentials committee of not less than three members. The credentials committee shall immediately examine the credentials of the members elected. If a majority of the credentials are in order, the credentials committee shall so report and the oath of office shall be administered to the Councilmembers-elect by some person duly qualified to administer oaths.

(3) The oath having been administered, the Council shall then elect a Chair and Vice-Chair as provided by Section 3.07 of the County Charter.

(4) The Chairperson shall assume the chair of the presiding officer immediately after being elected and the Council shall then appoint the County Clerk, adopt the Rules of the Council, and appoint the Chair, Vice-Chair and members of the several Standing Committees by resolution.

(b) Regular Council Meetings; Relocation. Regular meetings of the Council shall be held in the County Building or Lihue Civic Center in Lihue, County of Kauai, State of Hawaii, or at a location designated by the Council, at 9:00 a.m. or other time designated by the Council, at least twice a month on a Wednesday, or on such day as the Council may designate. The Council by majority concurrence of its members may designate other locations, days, or times for its meetings.

(c) Standing Committee Meetings. When Standing Committees meet, they shall meet on Wednesday in the week after the regular meeting date, or on such other day if such Wednesday is untimely. The Planning Committee shall convene first, and shall be followed by the Housing/Transportation/Energy Conservation & Efficiency Committee, the Economic Development & Renewable Energy Strategies Committee, the Public Safety & Environmental Services Committee, the Intergovernmental Relations Committee, the Finance/Parks & Recreation/Public Works Programs Committee, and the Committee of the Whole.

(d) Special Meetings. Pursuant to the Charter and Chapter 92, H.R.S., special meetings may be called at any time by the Mayor, the Chair, or by five or more members of the Council. Written public notice shall be given as required by Chapter 92, H.R.S.

(e) Executive Sessions. All Council and Council Committee meetings shall be open to the public, except as provided by the Charter or Chapter 92, H.R.S. The Council or Council Committee may hold an executive session closed to the public pursuant to section 92-4, upon an affirmative vote, taken at an open meeting, of two-thirds of the members present; provided the affirmative vote constitutes a majority of the Council, for one or more of the following purposes:

(1) To consider the hire, evaluation, dismissal, or discipline of an officer or employee or of charges brought against the officer or employee, where consideration of matters affecting privacy will be involved; provided that if the individual concerned requests an open meeting, an open meeting shall be held;

(2) To deliberate concerning the authority of persons designated by the Council to conduct labor negotiations or to negotiate the acquisition of public property, or during the conduct of such negotiations;

(3) To consult with the Council's attorney on questions and issues pertaining to the Council's powers, duties, privileges, immunities, and liabilities;

(4) To investigate proceedings regarding criminal misconduct;

(5) To consider sensitive matters related to public safety or security;

(6) To consider matters relating to the solicitation and acceptance of private donations; and

(7) To deliberate or make a decision upon a matter that requires the consideration of information that must be kept confidential pursuant to a state or federal law, or a court order.

(8) To consider claims for and against the County where the premature public disclosure of information would adversely affect the County's interest.

(f) Emergency Meetings. If the Council finds that an imminent peril to the public health, safety, or welfare requires a meeting in less time than is provided for in Chapter 92, H.R.S., the Council may hold an emergency meeting or add an emergency item to a posted agenda provided:

(1) The Council states in writing the reasons for its findings;

(2) Two-thirds of all members agree that the findings are correct and an emergency exists;

(3) An emergency agenda and the findings are filed with the Office of the County Clerk; and

(4) Persons requesting notification are contacted by mail or telephone as soon as practicable.

“Emergency” is generally confined to natural disasters where immediate relief is needed for the public.

(g) Workshops. Committee Chairs may schedule workshops to encourage increased dialogue among county representatives, technical experts, and the general public. The Chair or Chair’s designee shall prepare the agenda and facilitate the meeting. Written public notice shall be given as required by Chapter 92, H.R.S. The workshop agenda may include the introduction of participants, presentations, and discussion of critical issues relating to a bill before the council.

(h) Notices. Notices for all regular, standing committee, special and executive session meetings shall be posted on the County of Kaua’i’s website. Failure to post notices on the County of Kaua’i’s website shall not invalidate any action taken by the Council or its committees if notice was given in accordance with Chapter 92, H.R.S.

(i) Public speaking. At the beginning of the agenda of any Council meeting or committee meeting, the public shall be allowed a total of fifteen (15) minutes to speak on any agenda item. Each speaker shall be limited to three (3) minutes to discuss the agenda item. If the fifteen minutes has not been utilized, the public shall be allowed the remaining time to speak on subjects not related to the agenda. Each speaker shall be allowed two (2) minutes to discuss matters not on the agenda.

[(g)](j) Adjournment. Meetings may be adjourned at any time by vote, and unless otherwise specified in the motion, every adjournment shall be deemed to be to the next regular meeting of the body.

## **RULE NO. 2**

### **QUORUM AND VOTE: EXCEPTIONS LISTED**

(a) Council. A [physical] majority (4) of the entire membership of the Council shall constitute a quorum and the [physical] majority (4) vote of the entire membership shall be necessary to take any action; provided, that an affirmative vote of at least two-thirds (5) of the Council shall be required for the following:

- (1) To authorize the issuance of general obligation bonds;
- (2) To override the Mayor's veto; [and]

(3) To suspend without pay for not more than one month any member for disorderly or contemptuous behavior or for personal vilification in its presence[.] ; and

(4) To authorize the release of opinions upon questions of law rendered by the Office of the County Attorney that have been requested by the Council.

[(4)](b) In the absence of a [physical] quorum during any official meeting of the Council, the Council shall:

[(A)](1) Recess its meeting to seek out a quorum; or

[(B)](2) Adjourn its meeting for lack of a quorum to a specified time and place.

[(b)](c) Committee. A [physical] majority of the membership of a Committee shall constitute a quorum, and a [physical] majority vote of the membership entitled to vote shall be necessary to take any action.

In the absence of a [physical] quorum during any official meeting of the Committee, the Committee shall:

(1) Recess its meeting to seek out a quorum; or

(2) Adjourn its meeting for lack of a quorum to a specified time and place.

[(c)](d) A [physical] majority of less than a quorum may adjourn from day to day and shall have power to compel the attendance of absent members.

(e) A Councilmember may remotely participate in a Council or Committee meeting through the use of telephone or video conference equipment if the Councilmember participating remotely:

(1) can be clearly heard by other Councilmembers, members of the public in physical attendance at the meeting, and on the video broadcast or webcast of the meeting;

(2) has access to all written testimony and documents being presented at the meeting; and

(3) can clearly hear other Councilmembers and members of the public who speak at the meeting.

### RULE NO. 3 OFFICERS AND THEIR DUTIES

(a) Council Chair. The Chair shall be the Presiding Officer of the Council. In the absence or disability of the Chair, the Vice-Chair shall act as the Presiding Officer. In the event of the absence or disability of both the Chair and Vice-Chair, the [chairperson] chair of the Finance / Parks & Recreation / Public Works Programs Committee shall act as the Presiding Officer. In his or her absence or disability, the [chairperson] chair of the Planning Committee shall act as the Presiding Officer.

It shall be the duty of the Presiding Officer:

(1) To open all meetings of the Council at the appointed hours by taking the Chair and calling the Council to order;

(2) To call for the approval of the minutes of the preceding meeting when a quorum shall be present;

(3) To maintain order and proper decorum;

(4) To announce the business before the Council in the order prescribed by these rules;

(5) To receive and to determine for disposition all matters properly brought before the Council, to call for votes upon the same, and to announce the results;

(6) To authenticate by signature all acts of the Council as may be required by law;

(7) To make known all Rules of Order when so requested and to decide all questions of order, subject to an appeal to the Council;

(8) To announce the result on any matter voted on by the Council, and in case of a tie vote, to order that the matter be made the special order of the day for the next regular meeting.

(9) To act as the Council's liaison in dealing with the Clerk's Office functions, provide for the coordination of all administrative activities in the legislative branch and the Clerk's and Auditor's offices to see that they are honestly, efficiently and lawfully conducted, sign all instruments requiring execution or agreement by the Council, act as chief procurement officer of the

legislative branch pursuant to Chapter 103D of the Hawai'i Revised Statutes, and perform such other duties as may be required by law, or such as may properly appertain to such office; [and]

(10) To approve Councilmembers' travel requests[.];

(11) To receive all reports, communications, bills, resolutions, and other items addressed to the Council from the public, the Mayor, various departments of the government, and individual Councilmembers, and immediately make the proper referrals of these matters to the Council or to the appropriate Committee Chairperson(s). All communications addressed to the Council shall be numbered and made available to the public upon request, except as otherwise provided by law. All communications addressed to an individual Councilmember shall remain sealed or unopened and be immediately referred to that Councilmember, and shall not be made available to other Councilmembers or parties without the consent of the Councilmember to whom the communication was addressed; and

(12) To hold a Chair's meeting, as needed, to informally discuss scheduling, operational, or procedural matters, that are within the decision-making authority of the Chair or a committee chair, and that do not require Council approval; provided, that all Council members shall be given written notice of the date, time and place of the meeting, and the topics to be discussed; and provided, further, that a quorum shall not be required.

(b) It shall be the duty of the Vice-Chair:

(1) To assist the chair in the supervision over agencies and staff of the legislative branch of the County;

(2) To assist the chair in the coordination of all administrative activities of the legislative branch of the County;

(3) To serve with the chair as spokesperson and representative for the council;

(4) To assist the chair in providing adequate administrative and staff support to the chairs and members of committees and subcommittees; and

(5) To assist the chair in anticipating issues and problems deserving or in need of special meetings.

~~[(b)]~~(c)Committee Chair. The Chair of each Committee may call any meetings or hearings of the Committee subject to the approval of the Committee, and shall preside at such meetings or hearings. The Vice-Chair shall perform the duties of a Chairperson who is absent.

~~[(c)]~~(d)County Clerk. It shall be the duty of the County Clerk or an authorized representative, in addition to those duties prescribed by law:

(1) To read bills, resolutions, and other matters to the Council, if so required;

(2) To forward at once to the proper parties all communications and other matters, either directly or through a Committee, as the case may be. All communications addressed to an individual Councilmember shall remain sealed or unopened and be immediately referred to that Councilmember, and shall not be made available to other Councilmembers or parties without the consent of the Councilmember to whom the communication was addressed;

(3) To deliver to the appropriate Committee all petitions, resolutions, bills or other matters, as may be duly referred to such Committee;

(4) To note all questions of order with the decision thereon, collect the same together and append them to the Journal;

(5) To make a list of all bills, resolutions, petitions, communications and other matters set for consideration on particular dates;

(6) To have charge of all records of the Council and be responsible for same; [and]

(7) To be responsible for the administration of the Office of the County Clerk;

(8) To maintain order among those members of the public present at Council meetings and, when required by the Chair, remove any person who violates these rules;

(9) To advertise digests of all bills passed on first reading in accordance with law;

(10) To enter objections of the Mayor in the journal of the Council upon receipt of bills returned disapproved and place such objections related to bills on the agenda as directed by the Chair;

(11) To certify ordinances; and

~~[(7)]~~(12) To serve in all matters as Clerk of the Council and to perform all clerical duties and offices pertaining to such position as the Council shall from time to time direct, as well as other duties as shall by law or these rules, or rules hereafter adopted, be assigned to the Clerk, or such as properly pertain to such position.

(e) Deputy County Clerk. It shall be the duty of the Deputy County Clerk to assume the duties of the County Clerk in the Clerk's absence and perform other duties as may be assigned by the Clerk.

#### **RULE NO. 4 COMMITTEES**

There shall be four kinds of committees; namely, (a) Standing Committees; (b) Joint Committees; (c) Sub-Committees; (d) Special Advisory Committees.

(a) **Standing Committees.** There shall be seven Standing Committees consisting of both voting members and ex-officio members, except for the Committee of the Whole which shall consist of seven (7) voting members. Ex-officio members of a committee shall have a voice, but no vote in all committee proceedings, and are not counted in determining the number required for a [physical] quorum or whether a [physical] quorum is present. Ex-officio members shall also not have a right to make motions.

(1) **A Committee on Planning** consisting of five (5) voting members and two (2) ex-officio members. The Planning Committee shall consider all matters pertaining to land use, the General Plan, zoning, shoreline protection, subdivision controls, environmental concerns, historic preservation, [appointments to boards and commissions relating to the Committee,] and budget amendment requests and legislation relating to the Committee.

(2) **A Committee on Housing / Transportation / Energy Conservation & Efficiency** consisting of five (5) voting members and two (2) ex-officio members. The Housing / Transportation / Energy Conservation & Efficiency Committee shall consider all matters pertaining to housing, public transportation, energy [conversation] conservation and efficiency, [appointments to boards and commissions relating to the Committee,] and budget amendment requests and legislation relating to the Committee.

(3) **A Committee on Economic Development & Renewable Energy Strategies** consisting of five (5) voting members and two (2) ex-officio members. The Economic Development & Renewable Energy Strategies Committee shall consider all matters pertaining to agriculture, visitor industry, tourism, military, small business, employment, economic promotional efforts, renewable energy strategies, [appointments to boards



and commissions relating to the Committee,] and budget amendment requests and legislation relating to the Committee.

(4) **A Committee on Public Safety & Environmental Services** consisting of five (5) voting members and two (2) ex-officio members. The Public Safety & Environmental Services Committee shall consider all matters pertaining to police, fire, prosecutor's office, civil defense, legal issues relating to public safety, liquor control, solid waste, wastewater, [appointments to boards and commissions relating to the Committee,] and budget amendment requests and legislation relating to the Committee.

(5) **A Committee on Intergovernmental Relations** consisting of five (5) voting members and two (2) ex-officio members. The Intergovernmental Relations Committee shall consider all matters relating to Constitutional changes, Federal and State programs and legislation, the Hawai'i State Association of Counties (HSAC), the National Association of Counties (NACo), [and appointments to boards and commissions relating to the Committee,] and budget amendment requests and legislation relating to the Committee.

(6) **A Committee on Finance / Parks & Recreation / Public Works Programs** consisting of five (5) voting members and two (2) ex-officio members. The Finance / Parks & Recreation / Public Works Programs Committee shall consider all matters pertaining to finances, revenues, taxes, real property tax, parks, beaches, recreational and neighborhood centers, convention hall services and facilities, Wailua Golf Course, promotion and initiation of recreational programs and events, youth and elderly recreational programs, highways and roads, utilities, water development, county buildings, baseyards, and [appointments to boards and commissions relating to the Committee,] and budget amendment requests and legislation relating to the Committee.

(7) **Committee of the Whole** consisting of all members of the Council. The Committee of the Whole shall consider all matters pertaining to establishment of new committees, policies of the Council, goals and objectives of the Council and its Committees, rules of the Council, screen questions of ethics, internal matters dealing with the Council and the Clerk's office, charter amendments, preparation of the annual County Operating and Capital Improvement Projects (CIP) budgets, all issues involving the Office of the County Auditor, the Department of Personnel Services, human resources, elderly affairs, [appointments to boards and commissions relating to the Committee,] and budget amendment requests and legislation relating to the Committee.

(b) Joint Committees. The Council may, through motion duly adopted, refer items to Joint Committees. Such referral shall be sufficient to establish such Joint Committees. Such Joint Committees shall consist of any combination of

Standing Committees and shall be presided over by the Chair of the first named Standing Committee. Such Joint Committees shall meet and report on all matters referred to them in the same manner as Standing Committees.

(c) Sub-Committees. Sub-Committees shall report to a Standing Committee from time to time as the occasion requires, serving until discharged after final reporting on the special matter referred to it.

(d) Special Advisory Committees. Special Advisory Committees [shall] may be appointed by the Council or a Standing Committee, and such committees shall perform studies as requested by the Council or Standing Committee.

(1) Special Advisory committees may be created as needed by the Council chair or standing committee chair with the concurrence of a majority of the voting members of either the Council or standing committee. An advisory committee shall consist of at least one councilmember from the Council or standing committee and may include members from the private sector and representatives from other political subdivisions and other government agencies.

(2) Advisory committees shall assist in the resolution or study of issues arising from specific areas of concern resulting from the main subject matter assigned to their respective standing committees. And in this regard to avoid duplication in the consideration of issues, the council shall have but one advisory committee studying or undertaking to resolve a single subject or issue.

(3) All communications and advice from an advisory committee shall be made to the Council, or, if appointed by a standing committee, to that committee.

(4) Advisory committees shall serve until discharged by the Council standing committee that appointed it.

(e) Formation by Resolution. Sub-Committees and Special Advisory Committees shall be established by resolution which shall state:

[(A)](1) the purpose of the committee;

[(B)](2) the members of the committee;

[(C)](3) the committee's scope of work; and

[(D)](4) the timetable under which the committee will complete its work.

(f) Committee Reports. Committees shall report from time to time upon all matters referred to them.

(1) Whenever any matter shall be referred to a Committee it shall be the duty of such Committee to make diligent inquiry into all of the facts and circumstances connected with such matter. If necessary, the County Attorney may be consulted, witnesses may be summoned and examined, documents and records searched and everything done to bring all facts pertaining to such matter before the Council.

(2) The report of a Committee on a bill or resolution shall state clearly the amendments, if any, proposed. If a substitute bill or resolution shall be reported in place of the one referred to such Committee, the same must agree with the subject of the one submitted and returned to the Council.

(3) Whenever a Committee fails to agree, the majority of voting members shall report and the same shall be the report of the Committee. The minority of voting members of the Committee may file a separate report or simply note on the report of the majority of voting members of the Committee the words, "I (or we) do not concur."

## **RULE NO. 5 VOTING, ATTENDANCE, AND ABSENCE**

(a) Voting Methods. There shall be four methods of ascertaining the decision of the Council or Committees upon any matter:

1st, by a call of the roll of the voting members and a record made of the vote of each voting member. The vote on any bill or resolution shall be by roll call. In addition, upon the request of any voting member, a roll call vote shall be taken.

2nd, by voice vote;

3rd, by rising; and

4th, by unanimous consent

(b) Silent Vote. Unless a member is absent from voting, the member's silence shall be recorded as an affirmative vote for the motion. Each vote shall be recorded in the Journal and reported to the Presiding Officer, who shall announce the result to the Council or Committee.

(c) Voting Required. No member shall refrain from voting unless the member is absent or possesses a direct conflict of interest on the matter being voted on in accordance with Kaua'i County Charter Section [24.04(B)] 20.04B. The

member shall make full disclosure of their conflict of interest and shall not participate in the said matter.

(d) Attendance. No member may be absent from a meeting of the Council or Committee, or from the service of the Council or the Committee, unless the member has so advised the Council Chair in the event of a Council Meeting, or the Committee Chair in the event of a Committee Meeting, prior to or during the course of the meeting.

(e) Council Absence, Tie Vote. At a Council meeting, if members are evenly divided on any main motion or if there are insufficient votes to carry any main motion because of the absence of a member, the item shall be made the special order of the day for the next regular meeting.

(f) Committee Absence, Tie Vote. At a Committee meeting, if Committee members entitled to vote are evenly divided on any main motion or if there are insufficient votes to carry any main motion because of the absence of a voting member, the item shall be automatically referred to the next agenda of the Committee for disposition.

(g) Explaining Vote; Changing Vote. Whenever the ayes and noes are called, no one, without the unanimous consent, shall be permitted to explain their vote; and after the announcement of the result, no one shall be permitted to vote or to change their vote without unanimous consent.

## **RULE NO. 6**

### **MOTIONS**

(a) No motion may be received and considered until the same has been seconded.

(b) After a motion is stated or read by the Presiding Officer, it is deemed in the possession of, and shall be disposed of by vote. However, any motion may be withdrawn by the movant with consent of the second at any time before a decision or amendment.

(c) Whenever any question whatsoever is under discussion, the motions relative thereto shall be:

1st, to lay on the table; (no debate)

2nd, to postpone or defer to a certain time; (no debate)

3rd, to commit or refer;

4th, to amend; or

5th, to postpone indefinitely; when a question is postponed indefinitely, the same shall not be acted upon again or revised at any subsequent meeting in the calendar year in which such question was so disposed; or

6th, to receive for the record, to receive, or to file, which means to take final action to close the file on the item;

which motions shall have precedence in the order named. The first two motions shall be decided without debate and shall be put as soon as made.

(d) When any of said motions is decided in the negative, the same shall not be revived at the same meeting relative to the main question under discussion. If all are negative as aforesaid, the only remaining question shall be as to the passage or adoption of the bill, resolution, or other main question.

(e) When any matter before the Council or Committee is postponed to a certain time, the period of postponement shall be specifically stated. If not, the matter shall be an order of business for the next Committee or Council meeting.

(f) No member may speak longer than five minutes, nor may a member speak more than twice on the same question without leave of the Presiding Officer, subject to an appeal to the body, unless the member is the maker of the motion or sponsor of the matter pending, in which case the member may speak for up to twenty (20) minutes or in reply, but if in reply, not until every other member choosing to speak has spoken.

(g) Motion to Adjourn. A motion to adjourn is always in order and shall be decided without debate. One motion to adjourn shall not follow another without intervening business.

(h) Previous Question. The object of the motion for the previous question is to cut off debate. It shall always be in order and shall require a two-thirds vote to carry it. Whenever such motion prevails, the main question, subject to the order of priority, shall be put.

(i) Reconsideration. When a motion has been made and carried in the affirmative or negative, only a member who voted with the majority may move, at the same meeting or at the next regular meeting, to reconsider it and such motion shall take precedence over all other questions except a motion to adjourn; except that pursuant to the Charter, when a bill fails to pass on final reading and a motion is made to reconsider, the vote on such motion shall not be acted upon before the expiration of 24 hours.

(j) Point of Order. A Point of Order may be raised at any stage of the proceedings, except during a calling of the roll when the ayes and noes are called for.

(1) When the Chair or any member thinks that the rules are being violated, the Chair or member can make a Point of Order (or "raise a question of order"), thereby calling upon the Chair for a ruling and an enforcement of the regular rules. Such question shall be decided by the Chair, without debate, subject to an appeal to the Council. In addition, the Chair may call for the sense of the body on any question of order.

(2) Whenever any person is called to order while speaking, that person shall be in possession of the floor after the question of order is decided, and may proceed with the matter under discussion within the ruling made on the question of order.

#### **RULE NO. 7 APPEAL**

The Council or Committee may, by a majority vote, overrule the decision of the Chair upon a motion of appeal which is duly seconded.

#### **RULE NO. 8 DISCLOSURE OF INTEREST**

Whenever a possible conflict of interest to any matter pending before the Council or any of its Committees becomes apparent to a member, the member shall promptly make a written disclosure to such body.

#### **RULE NO. 9 PETITIONS**

Any person may petition the Council. Petitions and other matters shall be in writing, with at least the name of the petitioner signed and printed. The petition shall be disposed of by the Chair, including its referral to the proper agenda if deemed appropriate.

#### **RULE NO. 10 GENERAL PROVISIONS REGARDING BILLS, RESOLUTIONS, MOTIONS AND AMENDMENTS**

(a) Introduction. Any bill or resolution may be introduced by any member. The original copy of any bill or resolution shall be written, dated, and signed by the introducer; otherwise it shall not be considered.

(b) Manager. Each legislation shall have a manager. The introducer and/or appropriate Committee Chair shall serve as manager of the legislation and may delegate this function to another Councilmember. The manager shall be responsible for the management of such legislation including the securing of all pertinent information regarding the matter.

(c) Placement on Agenda. All bills and resolutions must be initialed by the Council Chair or, in the Chair's absence, the Vice Chair (or other designated chair as stated in Rule 3) in order to be placed on the agenda; provided that any bills or resolutions shall be placed on the agenda within ninety (90) days of the date of the written request by a Councilmember to the Council Chair.

(d) Amendment of Bills and Resolutions. No bill or resolution may be amended so as to change its original purpose. On the demand of at least four members, any bill shall, after amendment, be laid over for one week before its final reading. Every bill or resolution, as amended, shall be in writing before final passage.

(e) Motions and Amendments. Motions and amendments may be verbal, but shall be reduced to writing, if requested by the Presiding Officer, and shall be read by the County Clerk upon request by any member.

(f) Bill Readings. Pursuant to the Charter, bills shall be passed only after two readings on separate days. No bill shall become an ordinance unless passed on second and final reading by a majority of all Councilmembers or by at least five Councilmembers, as the case may be.

(g) Resolution Readings. Except as otherwise provided by the County Charter, resolutions shall be adopted on one reading by the affirmative vote of a majority of the entire membership of the Council.

(1) Eminent Domain Resolutions. Pursuant to the Charter, resolutions authorizing proceedings in eminent domain shall not be acted upon on the date of introduction, but shall be laid over for at least fourteen days before adoption. Such resolutions shall be advertised once in a newspaper of general circulation in the County at least fourteen days before adoption by the Council. Not less than three copies of such resolutions shall be filed for use and examination by the public in the Office of the County Clerk at least fourteen days prior to the adoption thereof.

(h) Full oral readings of bills and resolutions are hereby waived and may be by title and/or number only unless a full reading is requested by any of the members present.

(i) Publication of Bills. Bills embracing: (a) the fixing of special assessments for the costs of improvements, (b) the appropriation of public funds or the authorization for the issuance of general obligation bonds, or (c) the imposition of a duty or penalty on any person, shall pass first reading by a vote taken by ayes and noes, and digests of such bills shall be advertised once in a newspaper of general circulation in the County, with the vote noted, at least seven days before

final reading by the Council. Not less than three copies of such bills shall be filed for use and examination by the public in the Office of the County Clerk at least seven days prior to the final reading thereof.

(j) Submission to Mayor. Every bill or resolution authorizing proceedings in eminent domain which shall have passed the Council and which shall have been duly authenticated, shall be presented to the Mayor for his approval. Thereafter, action on the same shall be governed by the procedure set forth in Section 4.03 of the County Charter.

## **RULE NO. 11 CERTIFICATES**

Certificates are non-legislative in nature and are intended to recognize people or organizations for outstanding achievements, to offer thanks, to honor retirees, to offer condolences, or to support the observance of certain time periods in recognition of certain causes.

(a) These certificates are approved upon signing and require no other formal Council action.

(b) The sponsoring Councilmember shall be responsible for securing the signatures of the other Councilmembers.

(c) Any conflicts such as sponsorship, duplicate requests, or whether the subject matter should be in certificate or resolution form shall be decided by the Council Chair, subject to appeal to the Council.

(d) Not more than two (2) certificates shall be presented during a Council or Committee meeting. Requests to present certificates shall be approved by the Chair on a first come first served basis.

## **RULE NO. 12 PUBLIC HEARINGS**

(a) Committee Hearings. Public hearings of Council matters initiated by or referred to a Committee shall be chaired by the Chair or Vice Chair of that Committee.

(b) Council Hearings. Public hearings initiated by the Council shall be chaired by the Chair or Vice Chair of the Council.

(c) Upon the conclusion of any public hearing, the matter shall remain within the jurisdiction of the appropriate body for amendments, recommendations or Committee disposition.



(d) Location of Hearings. All public hearings of the Council or Committees shall be held in the County Building or Lihue Civic Center or at a location designated by the Council and during normal working hours of the County, unless otherwise provided by law or majority concurrence of the Council or Committee.

If a petition signed by at least 50 people requests the public hearing to be held at another available public facility related to the subject matter of the public hearing and/or another available time, and the petition is submitted to the Office of the County Clerk and time-stamped before 12:00 noon on the day before the meeting at which the public hearing date is established, then the public hearing [shall] may be held at the requested available public facility and/or time, unless otherwise provided by law.

(e) Conduct of Public Hearings.

(1) Public hearings are held to receive testimony from the public and Councilmembers should reserve their opinions and arguments for the appropriate Council or Committee meeting.

(2) The Council Chair or Committee Chair shall be the Presiding Officer, and shall be responsible for conducting a fair, expeditious and orderly hearing.

(3) The notice and purpose of the hearing shall be clearly stated at the beginning of each hearing.

(4) The following rules shall be read or be available for distribution by the Clerk:

(A) Persons wishing to testify are requested to register with the Clerk prior to the Chair calling the meeting to order.

(B) Persons testifying are entitled to the floor only when recognized by the presiding chair.

(C) Persons testifying may state their name, whom they represent, and shall state whether they are a registered lobbyist, in compliance with H.R.S. Chapter 97, Lobbyist.

(D) Persons testifying shall testify only on the subject matter under consideration and shall refrain from direct questioning of the Councilmembers and staff personnel and shall direct any remarks or questions to the Chair.

(E) Persons with written testimony may be given priority at the discretion of the Chair. To ensure its distribution prior to the meeting, written testimony must be received in the Office of Council

(d) No unauthorized person shall enter the floor of the Council or Committee except by permission of the Presiding Officer.

(e) Members of the public shall be allowed to speak at Council and Committee meetings under the same rules as stated in Rule 12 (e), 'Conduct of Public Hearings'.

#### **RULE NO. 14 ORDER OF BUSINESS**

After roll call and the approval of the minutes, the Presiding Officer shall call for business in the following order:

(a) Consent calendar;

[(a)](b) Messages from the Mayor;

[(b)](c) Reports and communications from County officers;

[(c)](d) Petitions, memorials, and communications;

[(d)](e) Reports of Standing Committees;

[(e)](f) Reports of Other Committees;

[(f)](g) Introduction of bills and resolutions;

[(g)](h) Unfinished business;

[(h)](i) Order of the Day, including adoption of resolutions and second reading of bills;

[(i)](j) Miscellaneous business;

[(j)](k) Public hearings may be held at the time set in previous meetings of Council.

#### **RULE NO. 15 AGENDA AND PRIORITY OF BUSINESS**

(a) All communications submitted to the Council shall be time-stamped upon receipt and presented to the Council Chair for disposition.

(b) All communications to be placed on the agenda must be initialed by the Council Chair and received by the Council or the Office of the County Clerk

before 4:30 p.m. on the Friday two weeks preceding the day of the regular or Committee meeting. Communications by a Councilmember shall be placed on the agenda within ninety (90) days of the date of the written request by a Councilmember to the Council Chair.

(c) The Council or committee may place on the agenda a consent calendar of items that may be approved without presentations, clarifying questions, or debate. All items on the consent calendar may be approved by a single motion. Upon request by a member, an item on the consent calendar shall be discussed individually.

[(c)](d) The Clerk shall prepare and post an agenda for all meetings of the Council and its Committees in compliance with the provisions of Chapter 92, H.R.S.

[(d)](e) Pursuant to Chapter 92, H.R.S., the Council or Committees shall not change the agenda, once filed, by adding items thereto without a two-thirds recorded vote of all members to which the body is entitled; provided that no item shall be added to the agenda in the manner provided herein if it is of reasonably major importance and action thereon by the body will affect a significant number of persons.

[(e)](f) The Council may, by previous motion, direct that any matter shall be made a special order of business, which shall take precedence of all business after the fifth order, or that it shall take any other position lower down on the calendar.

[(f)](g) The unfinished business in which the Council was engaged at the time of the last adjournment shall have preference in the Order of the Day, and no business shall be received until such unfinished business is disposed or, unless by special leave of the Council.

[(g)](h) All questions relating to the priority of business to be acted upon by the Council or Committee shall be decided without debate.

## **RULE NO. 16 MINUTES**

(a) Pursuant to Section 92-9, Hawaii Revised Statutes, written minutes of all meetings and public hearings shall be kept.

(b) The written minutes shall give a true reflection of the matters discussed and the views of the participants.

(c) A full, verbatim transcript is not required, unless requested by a Councilmember prior to the meeting or public hearing.

(d) Upon approval of the written minutes, the tape recording shall be erased.

**RULE NO. 17**  
**COMMUNICATIONS WITH THE COUNTY ATTORNEY**

Requests for opinions made by individual councilmembers to the County Attorney and opinions received pursuant to those requests shall be privileged communications between the councilmember making the request and the County Attorney if the subject matter of the request and opinion have not been placed on a Council agenda. If the subject matter of the opinion and the request has been placed on a Council agenda, then the request for the opinion and the opinion received pursuant to that request shall be circulated concurrently to other councilmembers but shall remain privileged communications with regard to other parties.

**RULE NO. 18**  
**RESTRICTION ON EMPLOYMENT OF RELATIVES**

(a) A public officer of the legislative branch of County government may not appoint, employ, promote, advance, or advocate for appointment, employment, promotion, or advancement, in or to a position in the legislative branch of County government any individual who is his or her relative or domestic partner, or is a relative or a relative of a domestic partner of any public officer.

(b) An individual appointed, employed, promoted, or advanced in violation of this rule is not entitled to pay, and money may not be paid from the county treasury to an individual so appointed, employed, promoted, or advanced.

(c) For the purpose of this rule, "relative" means an individual who is related to a public officer of the legislative branch of County government as father, mother, son, daughter, brother, sister, uncle, aunt, first cousin, nephew, niece, husband, wife, father-in-law, mother-in-law, son-in-law, daughter-in-law, brother-in-law, sister-in-law, stepfather, stepmother, stepson, stepdaughter, stepbrother, stepsister, half brother, or half sister.

(d) For the purpose of this rule, "domestic partner" means an adult, unrelated by blood, with whom a public officer: (1) has an exclusive committed relationship, (2) maintains a mutual residence, and (3) shares the cost of basic living expenses. A "relative of a domestic partner" means the father, mother, brother, sister, son or daughter of the domestic partner of a public officer.

(e) For the purpose of this rule, "public officer" shall mean members of the council, the County clerk and the County auditor.

**RULE NO. 19**  
**TRAVEL POLICY**

(a) Notice of Travel. Prior to traveling out of the County on council business, a councilmember shall notify the chair, in writing of his/her travel, stating where the councilmember will be traveling and the subject of seminar, meeting, site visit or other program or event to be attended or other County business to be conducted during the travel.

(b) Travel Report. Upon completion of any travel out of the County that is paid for in whole or part with County funds or was a gift to the County, each councilmember shall complete a travel report that shall include a statement of when the travel occurred, what cities, counties and/or sites were visited, which seminars, meetings, programs or events were attended, what the councilmember learned or what business the councilmember transacted, and any other benefits derived by the councilmember from the travel for the County.

(c) Additional Policies and Procedures. The chair may establish additional policies and procedures relating to travel by councilmembers that are consistent with this rule.

**[RULE NO. 17] RULE NO. 20**  
**NEWS REPORTERS**

News reporters wishing to take notes of the business of the Council may be assigned such places by the Presiding Officer as will effect their object without interfering with the convenience of the Council or its Committees.

**[RULE NO. 18] RULE NO. 21**  
**NEW RULES AND AMENDMENTS**

No rule of the Council may be altered or rescinded nor may any new rule be adopted without the affirmative vote of at least four Councilmembers. All amendments shall be by resolution.

**[RULE NO. 19] RULE NO. 22**  
**SUSPENSION OF THE RULES**

None of these rules may be suspended, except by the affirmative vote of at least five Councilmembers.

**[RULE NO. 20] RULE NO. 23**  
**WHEN RULES ARE SILENT**

The rules of parliamentary practice as laid down by the current edition of "Robert's Rules of Order, Newly Revised," shall govern the Council where the same are not inconsistent with these rules.